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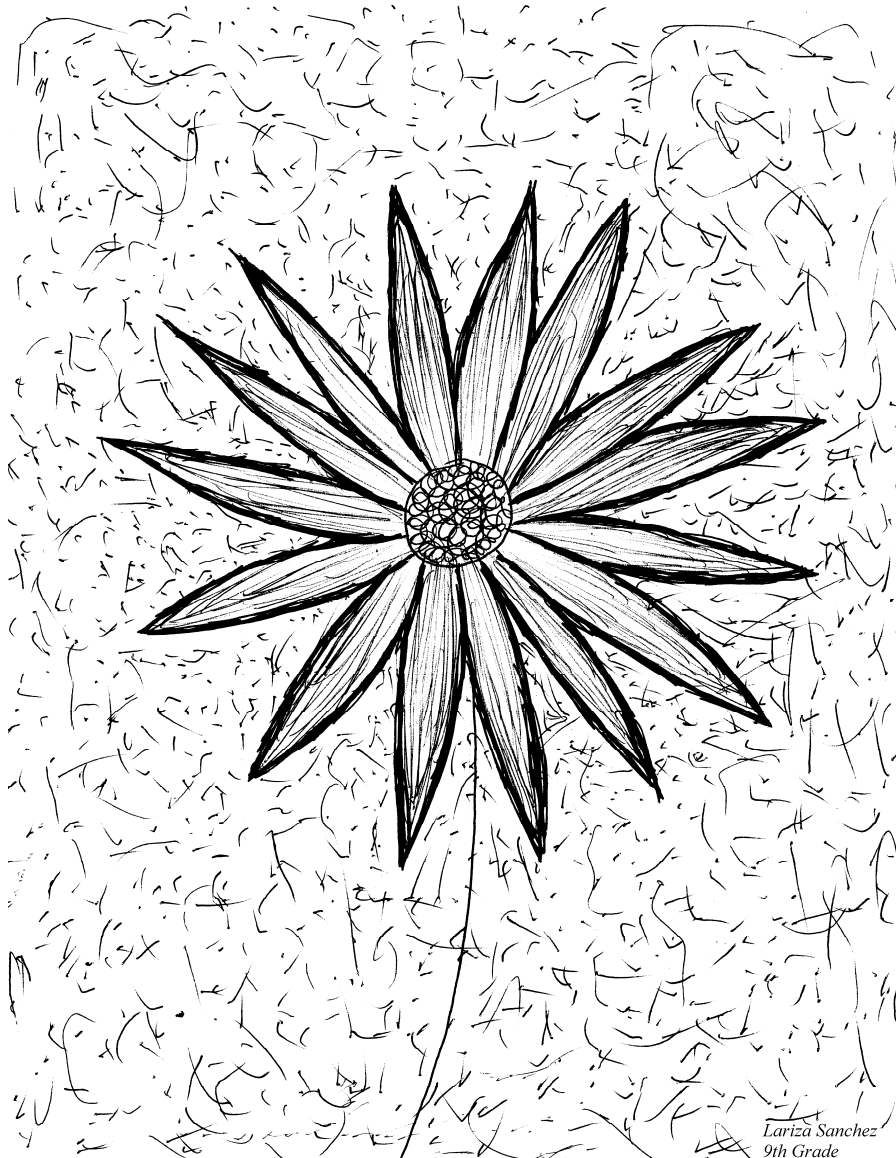
# TEXAS REGISTER

*Volume 34 Number 18*

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*Pages 2635 - 2718*

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Lariza Sanchez  
9th Grade

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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# THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

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## Appointments

### Appointments for April 13, 2009

Appointed to the Judicial Compensation Commission for a term to expire February 1, 2015, Cruz G. Hernandez of Burleson. Mr. Hernandez is replacing Ramiro Galindo of Bryan whose term expired.

Appointed to the Board of Pardons and Paroles for a term to expire February 1, 2013, Thomas A. Leeper of Huntsville. Mr. Leeper is replacing Barbara Lorraine of Angleton who resigned.

### Appointments for April 15, 2009

Appointed to the Texas Medical Board for a term to expire April 13, 2015, Charles David Baucom of Sulphur Springs (Mr. Baucom is being reappointed).

Appointed to the Texas Medical Board for a term to expire April 13, 2015, Patrick J. Crocker of Austin (replacing Larry Price of Belton whose term expired).

Appointed to the Texas Medical Board for a term to expire April 13, 2015, John D. Ellis, Jr. of Houston (replacing Annette Raggette of Austin whose term expired).

Appointed to the Texas Medical Board for a term to expire April 13, 2015, Manuel G. Guajardo of Brownsville (Dr. Guajardo is being reappointed).

Appointed to the Texas Medical Board for a term to expire April 13, 2015, Allan N. Shulkin of Dallas (Dr. Shulkin is being reappointed).

Appointed to the Texas Medical Board for a term to expire April 13, 2015, Wynne M. Snoots of Dallas (replacing Amanullah Khan of Dallas whose term expired).

Appointed to the Texas Medical Board for a term to expire April 13, 2015, Timothy J. Turner of Houston (Mr. Turner is being reappointed).

### Appointments for April 17, 2009

Appointed to the Assistive and Rehabilitative Services Council for a term to expire February 1, 2015, Diego Demaya of Houston (replacing Joseph Muniz of Harlingen whose term expired).

Appointed to the Assistive and Rehabilitative Services Council for a term to expire February 1, 2015, Berkley Dyer of Austin (replacing Robin Riccardi of Spring whose term expired).

Appointed to the Assistive and Rehabilitative Services Council for a term to expire February 1, 2015, Mary Taylor "Jody" Unruh of Houston (replacing Connie Hughes of Idalou whose term expired).

Appointed to the Council on Cardiovascular Disease and Stroke for a term to expire February 1, 2013, Clyde W. Yancy, Jr. of DeSoto (pursuant to Health and Safety Code Chapter 93, Section 93.0002).

Appointed to the Council on Cardiovascular Disease and Stroke for a term to expire February 1, 2015, Melbert C. Hillert, Jr. of Dallas (pursuant to Health and Safety Code Chapter 93, Section 93.0002).

Appointed to the Council on Cardiovascular Disease and Stroke for a term to expire February 1, 2015, Thomas E. Tenner, Jr. of Lubbock (pursuant to Health and Safety Code Chapter 93, Section 93.0002).

Appointed to the Cancer Prevention and Research Institute of Texas Oversight Committee for a term to expire December 4, 2011, Faith Johnson of DeSoto. Judge Johnson is replacing Jeanne L. Phillips of Dallas who resigned.

Rick Perry, Governor

TRD-200901505



# THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following:  
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from  
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

## Request for Opinions

**RQ-0793-GA**

### Requestor:

The Honorable Rene Guerra

Hidalgo County Criminal District Attorney

100 North Closner, Room 303

Edinburg, Texas 78539

Whether the jurisdiction of a justice court in truancy matters is limited to the particular precinct in which a justice presides: Reconsideration of Attorney General Opinion No. GA-0701 (2009) (RQ-0793-GA)

### Briefs requested by May 18, 2009

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.*

TRD-200901489

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: April 21, 2009



## Opinions

**Opinion No. GA-0708**

The Honorable Jim Pitts

Chair, Committee on Appropriations

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether the Edwards Aquifer Authority may promulgate rules prohibiting certain permits or contracts with recharge facilities constructed prior to September 1, 1993 (RQ-0737-GA)

### SUMMARY

A court would likely conclude that the Edwards Aquifer Authority may promulgate rules prohibiting recharge and withdrawal permits for or contracts with recharge facilities that were constructed prior to September 1, 1993, that will not increase the amount of the facility's recharge.

A court would also likely conclude that the Edwards Aquifer Authority has authority to promulgate a rule providing that the denial of an interlocal contract under certain circumstances is unreasonable.

**Opinion No. GA-0709**

The Honorable Pete Gallego

Chair, Committee on Criminal Jurisprudence

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of a county attorney to issue commissions for reserve or nonpaid peace officers (RQ-0730-GA)

### SUMMARY

A county attorney is not authorized to appoint reserve peace officers.

**Opinion No. GA-0710**

The Honorable Patrick M. Rose

Chair, Committee on Human Services

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of a water company to paint fire hydrants black under certain circumstances (RQ-0750-GA)

### SUMMARY

Under Health & Safety Code section 341.0357, an owner is not required to first determine that the flow of a device having the appearance of a fire hydrant is less than 250 gallons per minute in order to paint the device black, if the owner determines that the device is otherwise unavailable for use by an entity providing fire suppression services in a fire emergency. Additionally, if the owner determines that all devices within a system are otherwise unavailable for use for fire suppression services other than on a temporary basis, an owner is required to paint all the devices black under section 341.0357 even when the flow from certain of those devices exceeds 250 gallons per minute.

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.*

TRD-200901524

Stacey Napier  
Deputy Attorney General  
Office of the Attorney General  
Filed: April 22, 2009



# TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

## Ethics Advisory Opinion

**EAO-483.** The Texas Ethics Commission has been asked to consider whether an officeholder may use political contributions to contribute to a trust fund for the benefit of an individual for payment of that individual's medical and other supplemental needs. (AOR-546)

### SUMMARY

Under the circumstances described in this opinion, an officeholder may not use political contributions to contribute to a trust fund established for the benefit of an individual for paying that individual's medical and other supplemental needs because such a use would constitute a personal use of political contributions in violation of section 253.035(a) of the Election Code.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Gov-

ernment Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200901517

Natalia Luna Ashley

General Counsel

Texas Ethics Commission

Filed: April 22, 2009

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# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~[Square brackets and strikethrough]~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 1. ADMINISTRATION

### PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

#### CHAPTER 252. ADMINISTRATION

##### 1 TAC §252.3

The Commission on State Emergency Communications (CSEC) proposes new §252.3, concerning Sick Leave Pool.

The new rule is proposed pursuant to Government Code §661.002, which requires the governing body of a state agency to adopt rules relating to the operation of the agency's sick leave pool.

##### FISCAL NOTE

Paul Mallett, CSEC's executive director, has determined that for each year of the first five fiscal years that §252.3 is in effect there will be no fiscal implications to the state or local governments as a result of enforcing or administering the proposed section.

##### PUBLIC BENEFIT

Mr. Mallett has determined that for each year of the first five years the proposed section is in effect the public will benefit from the flexibility afforded to agency employees or their family members suffering from a catastrophic illness or injury. Mr. Mallett has also determined that for each year of the first five years the proposed section is in effect there are no probable economic costs to persons required to comply with the section.

##### REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

CSEC has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225.

##### LOCAL EMPLOYMENT IMPACT STATEMENT

CSEC has determined that this proposal does not directly affect a local economy and therefore has not drafted a local employment impact statement as would otherwise be required under Administrative Procedures Act §2001.022.

##### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

In accordance with Government Code §2006.002(c), Mr. Mallett has determined that there will be no adverse economic effect on small businesses or micro-businesses. Accordingly, CSEC has not prepared the economic impact statement or regulatory flexibility analysis that would otherwise be required.

##### PUBLIC COMMENT

Comments on the proposal may be submitted in writing to Patrick Tyler, Commission on State Emergency Communications, 333

Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942 or by email to [patrick.tyler@csec.state.tx.us](mailto:patrick.tyler@csec.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

##### STATEMENT OF AUTHORITY

The new section is proposed pursuant to Health and Safety Code §771.051 and Government Code §661.002.

No other statute, article, or code is affected by the proposal.

##### §252.3. Sick Leave Pool.

(a) A sick leave pool program is established to help alleviate the hardship caused to an employee and the employee's family if a catastrophic illness or injury forces the employee to exhaust all accrued leave time and to lose compensation from the state.

(b) The Commission's Executive Director shall designate a Sick Leave Pool Administrator to administer the sick leave pool program.

(c) The Sick Leave Pool Administrator, with the advice and consent of the Executive Director, shall prescribe procedures for the operation of the sick leave pool program and include such procedures in the Commission's Human Resources Policy and Procedures Manual.

(d) Employee donations to the sick leave pool are strictly voluntary and must be made in writing.

(e) Procedures for the operation of the sick leave pool program shall be consistent with Texas Government Code, Chapter 661.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 17, 2009.

TRD-200901466

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Earliest possible date of adoption: May 31, 2009

For further information, please call: (512) 305-6930



## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 355. REIMBURSEMENT RATES

#### SUBCHAPTER A. COST DETERMINATION PROCESS

##### 1 TAC §355.110, §355.111

The Texas Health and Human Services Commission (HHSC) proposes amendments to §355.110, Informal Reviews and Formal Appeals, and §355.111, Administrative Contract Violations, under Title 1 of the Texas Administrative Code (TAC), Part 15, Chapter 355, Subchapter A.

#### Background and Justification

Section 355.110 establishes the requirements for requesting informal reviews and formal appeals of HHSC adjustments to cost report data and §355.111 establishes actions HHSC may take in response to administrative contract violations relating to cost reporting requirements. HHSC, under its authority and responsibility to administer and implement rates, is updating these rules to replace outdated references and clarify the title in which the updated references are located.

#### Section-by-Section Summary

The proposed amendments to §355.110 are as follows:

Revise subsection (a)(1)(A) to replace an outdated reference to 1 TAC §§357.481 - 357.490 (relating to Formal Appeals) with a reference to 1 TAC §§357.481 - 357.498 (relating to Hearings Under the Administrative Procedure Act).

Revise subsection (d) to replace an outdated reference to 1 TAC §§357.481 - 357.490 with a reference to 1 TAC §§357.481 - 357.498 and to replace an outdated reference to Medical Fair Hearings with a reference to Hearings.

Revise subsection (e) to replace an outdated reference to 1 TAC §§357.481 - 357.490 with a reference to 1 TAC §§357.481 - 357.498.

The proposed amendments to §355.111 are as follows:

Revise paragraph (3) to replace an outdated reference to 40 TAC §§79.1601 - 79.1610 (relating to Formal Appeals) with a reference to 1 TAC §§357.481 - 357.498 (relating to Hearings Under the Administrative Procedure Act), to replace an outdated reference to 40 TAC Chapter 79 (relating to Legal Services) with a reference to 1 TAC Chapter 357 (relating to Hearings) and to replace an outdated reference to legacy DHS with a reference to HHSC or its designee.

#### Fiscal Note

Gordon E. Taylor, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five-year period the amended rule is in effect there will be no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

#### Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendment. The implementation of these proposed rule amendments does not require any changes in practice or any additional cost to the contracted provider.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with this amendment. The amendment will not affect local employment.

#### Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that, for each of the first five years the amendment is in effect, the

expected public benefit is that the rules will contain correct references to information regarding appeals and hearings, thus allowing the public to access accurate information regarding hearings and appeals.

#### Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

#### Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### Public Comment

Questions about the content of this proposal may be directed to Sarah Hambrick in the HHSC Rate Analysis Department by telephone at (512) 491-1431. Written comments on the proposal may be submitted to Ms. Hambrick by facsimile at (512) 491-1998, by e-mail to sarah.hambrick@hhsc.state.tx.us, or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register*.

#### Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Human Resource Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendments affect the Human Resources Code Chapter 32, and the Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

#### *§355.110. Informal Reviews and Formal Appeals.*

##### (a) General provisions.

(1) Definitions. The following words or terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(A) Formal appeal--An administrative hearing requested by an interested party under subsection (d) of this section and conducted in accordance with procedures described at [4 TAC] §§357.481 - 357.498 of this title [357.490] (relating to Hearings Under the Administrative Procedure Act [Formal Appeals]).

(B) Informal review--The informal reexamination of an action or determination by the Texas Health and Human Services Commission (HHSC) under this chapter requested by an interested party and conducted in accordance with subsection (c) of this section.

(C) Interested party--A Texas Department of Aging and Disability Services (DADS) contracted provider.

(2) Standing to file informal reviews or formal appeals. Only an interested party has standing to file for an informal review or formal appeal under this section.

(3) Subject matter of informal reviews and formal appeals. An interested party may request an informal review or formal appeal regarding an action or determination under §355.102 of this title (relating to General Principles of Allowable and Unallowable Costs), §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs), §355.104 of this title (relating to Revenues), and §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures), or program-specific allowable or unallowable costs, taken specifically in regard to the interested party.

(b) Separation of informal reviews and formal appeals from the reimbursement determination process.

(1) The filing of a request for an informal review or formal appeal under this section does not stay or delay implementation of reimbursement adopted by HHSC in accordance with the requirements of this chapter.

(2) Closure of cost report databases used in the reimbursement determination process and application of results of pending review or appeal. To facilitate the timely and efficient calculation of reimbursement amounts, HHSC closes cost report databases used in the reimbursement determination process prior to the proposal of reimbursement amounts.

(A) Impact on database of pending informal review or formal appeal. If an informal review is pending at the time the database is closed, the database shall include the interested party's cost report data including any adjustments made either in the desk review or field audit. If a formal appeal is pending at the time the database is closed, the database shall include the interested party's cost report data including any adjustments required as a result of the informal review.

(B) Uniform reimbursement.

(i) For programs where reimbursement is uniform by class of service and/or provider type, the cost report database used in reimbursement determination is closed six weeks prior to the public hearing on the proposed reimbursement that is based on the cost report database.

(ii) If an informal review or formal appeal is pending at the time the cost report database is closed, the results of the informal review or formal appeal shall be applied during the next reimbursement determination cycle, if applicable.

(C) Contractor-specific reimbursement.

(i) For programs where reimbursement is contractor-specific the cost report database is closed ten weeks prior to the end of the reimbursement determination cycle.

(ii) If an informal review or formal appeal is pending at the time the cost report database is closed, the results of the informal review or formal appeal shall be applied to the interested party's payment retroactively to the beginning of the current reimbursement determination cycle. The results of the informal review or formal appeal shall not be applied to the cost report database as a whole or to any other reimbursement amounts influenced by the cost report database as a whole until the next reimbursement determination cycle, if applicable.

(c) Informal review.

(1) An interested party who disputes an action or determination under this chapter may request an informal review under this section. The purpose of an informal review is to provide for the in-

formal and efficient resolution of the matters in dispute. An informal review is not a formal administrative hearing, but is a prerequisite to obtaining a formal administrative hearing and is conducted according to the following procedures:

(A) HHSC Rate Analysis must receive a written request for an informal review by hand delivery, United States (U.S.) mail, or special mail delivery no later than 30 calendar days from the date on the written notification of the adjustments. If the 30th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 30th calendar day is the final day the receipt of the written request will be accepted. HHSC Rate Analysis will extend this deadline if it receives a written request for the extension by hand delivery, U.S. mail, or special mail delivery no later than 30 calendar days from the date of the written notice of adjustments. The extension gives the requester a total of 45 calendar days from the date of the written notice of adjustment to file a request for an informal review. If the 45th calendar day is a weekend day, national holiday, or state holiday, then the 45th day is considered the next business day following the 45th calendar day. A request for an informal review or extension that is not received by the stated deadline will not be accepted.

(B) An interested party must, with its request for an informal review, submit a concise statement of the specific actions or determinations it disputes, its recommended resolution, and any supporting documentation the interested party deems relevant to the dispute. It is the responsibility of the interested party to render all pertinent information at the time of its request for an informal review.

(C) The written request for the informal review or extension must be signed by an individual legally responsible for the conduct of the interested party, such as the sole proprietor, a partner, a corporate officer, an association officer, a governmental official, a limited liability company member, a person authorized by the applicable DADS Form 2031 for the interested party on file at the time of the request, or a legal representative for the interested party. The administrator or director of the facility or program is not authorized to sign the request unless the administrator or director holds one of these positions. A request for an informal review that is not signed by an individual legally responsible for the conduct of the interested party will not be accepted.

(2) On receipt of a request for informal review:

(A) The lead staff member coordinates the review of the information submitted by the interested party. Staff may request additional information from the interested party, which must be received in writing by the lead staff member no later than 14 calendar days from the date the interested party receives the written request for additional information. If the 14th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 14th calendar day is the final day the receipt of the additional information will be accepted. Information received after 14 calendar days may not be used in the panel's written decision unless the interested party receives written approval of the lead staff member to submit the information after 14 calendar days. A request for an extension to the 14-calendar-day [14 calendar day] due date must be received by HHSC Rate Analysis prior to the 14th calendar day.

(B) Within 30 calendar days of the date a written request for informal review that complies with paragraphs (1) and (2) of this subsection is received or the date additional requested information is due or received, whichever is later, the lead staff member will send the interested party its written decision by certified mail, return receipt requested. If the 30th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 30th calendar day is the final day by which the written decision must be sent.

(d) Administrative hearings. An interested party who disagrees with the results of an informal review conducted under subsection (c) of this section may file a formal appeal of the review. The HHSC Appeals Division, Mail Code W-613, P.O. Box 149030, Austin, Texas 78714-9030, must receive the written request for a formal appeal from the interested party within 15 calendar days after the interested party receives the written decision as specified in subsection (c) of this section. The written request for a formal appeal must state the basis of the appeal of the adverse action and include a legible copy of the written decision from the informal review referenced in subsection (c)(2)(B) of this section. The formal appeal is limited to the issues that were considered in the informal review process. The information from the interested party is limited to the pertinent information considered in the informal review process. Formal appeals are conducted in accordance with the provisions of [4 TAC] §§357.481 - 357.498 of this title [357.490]. If there is a conflict between the applicable section of [4 TAC] Chapter 357 of this title (relating to [Medical Fair] Hearings) and the provisions of this chapter, the provisions of this chapter prevail.

(e) Lack of standing for formal appeal. Because the formal appeal is limited to issues considered in the informal review process, an informal review request that does not comply with subsections (c)(1)(A) - (C) of this section is not subject to further appeal under [4 TAC] §§357.481 - 357.498 of this title [357.490].

#### *§355.111. Administrative Contract Violations.*

The Texas Health and Human Services Commission (HHSC) may take the following actions for administrative contract violations.

(1) HHSC grants the following compliance periods for administrative contract violations:

(A) For failure to submit a cost report by the due date, HHSC grants the provider a compliance period of no more than 15 calendar days.

(B) For all other administrative contract violations, HHSC grants the provider a compliance period of no more than 30 calendar days to correct a contract violation. At the end of the compliance period, if HHSC determines that a contract violation is not corrected, but determines that the provider has made substantial progress toward correcting the contract violation, HHSC may grant an additional one-time extension period of up to 15 calendar days.

(2) If the contract violation is not corrected within the compliance period, HHSC imposes vendor hold on payments to the provider.

(3) If a contract violation is not corrected within 60 days from the date the provider is placed on vendor hold, HHSC may cancel the provider's contract on the 61st day. A provider may request an appeal hearing of the contract cancellation. Formal appeals are conducted in accordance with the provisions of §§357.481 - 357.498 of this title (relating to Hearings Under the Administrative Procedure Act) [40 TAC §§79.1601-79.1610 (relating to Formal Appeals)]. If there is a conflict between the applicable section of Chapter 357 of this title (relating to Hearings) [40 TAC Chapter 79 (relating to Legal Services)] and the provisions of this chapter, the provisions of this chapter prevail. If the provider appeals the contract cancellation by HHSC and the adverse action is sustained by an administrative law judge or judicial proceeding, the effective date of the contract cancellation is the date specified in the notice of contract cancellation. Unless otherwise specifically provided for, HHSC makes no payment for services provided by the provider after the effective date of the provider's contract cancellation. HHSC may continue payments for no more than 30 calendar days from the date HHSC or its designee [DHS] cancels or fails to renew a provider's contract if HHSC determines that:

(A) reasonable efforts are being made to transfer clients to another provider or to alternate care; and

(B) additional time is needed to effect an orderly transfer of the clients.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 16, 2009.

TRD-200901461

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: May 31, 2009

For further information, please call: (512) 424-6900



## **TITLE 4. AGRICULTURE**

### **PART 1. TEXAS DEPARTMENT OF AGRICULTURE**

#### **CHAPTER 15. EGG LAW**

##### **4 TAC §15.11**

The Texas Department of Agriculture (the department) proposes new §15.11, concerning retail egg replacement. The new section is proposed in order to provide requirements under which retailers may adopt procedures to replace broken or unsound eggs within a carton, to provide requirements for cartons used for egg replacement, to provide sanitation requirements for egg replacement, and to provide record keeping requirements. Documentation of employee training on these requirements would be kept at the retail establishment. New §15.11 also provides that retailers must submit a written plan for replacement to the department and, upon approval, operate under the conditions of a compliance agreement. At the time of adoption of the proposal, the department will modify the current Egg Administrative Penalty Matrix to ensure compliance with these regulations.

Due to their fragile nature and perishability, shell eggs can easily be damaged at any point in the distribution system. Damaged eggs provide an excellent growing environment for harmful bacteria, such as *Salmonella*, which can be associated with raw eggs. Existing rules require the removal of cartons containing damaged eggs from a retail display, but do not specify handling requirements or methods of disposal to ensure sanitary practices. The rule will allow retailers appropriate flexibility to reduce waste, while ensuring safe handling of eggs and maintaining labeling and grading requirements.

Joe Benavides, Regulatory Branch Chief, has determined that for the first five-year period the new section is in effect, there will be no fiscal implication for the state or local government as a result of enforcing or administering the new section.

Mr. Benavides also has determined that for the first five-year period the new section is in effect, the public benefit of enforcing and administering the section will be more sanitary egg handling and reduced waste. There will be no fiscal impact on small or micro-businesses, or persons required to comply with the section. The new requirements will apply to retailers only on a voluntary basis, by a retailer who wishes to enter into a compliance agree-

ment submitting a plan to the department for approval. Therefore, no regulatory flexibility analysis is required.

Comments on the proposal may be submitted to Joe Benavides, Regulatory Branch Chief, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new section is proposed under the Texas Agriculture Code, §132.044(e), which authorizes the department to provide for the repacking, downgrading, or both repacking and downgrading of eggs by a retailer; §132.003, which authorizes the department to adopt rules as necessary, in the administration of Chapter 132, relating to Eggs; and §12.020, which authorizes the department to enforce administrative penalties for violations of Chapter 132.

The code affected by the proposal is the Texas Agricultural Code, Chapters 12 and 132.

§15.11. Retail Egg Replacement.

(a) Replacement requirements. A retailer approved by the department in accordance with this section and operating under the conditions of a compliance agreement, may replace missing or damaged eggs provided:

(1) only eggs of the same packer, as evidenced by the license number printed or stamped on the carton, are used for replacement;

(2) only eggs of the same grade and size, as evidenced by the label on the carton are used for replacement;

(3) only eggs with the same expiration date, lot code, or Julian date, as evidenced by the label or stamp on the carton, are used for replacement;

(4) only eggs from the same brand, as evidenced by the label, are used for replacement eggs;

(5) eggs adjacent to eggs that have leaked into the carton or container and are in contact with the spilled egg content shall not be used as replacement eggs; and

(6) only eggs that are visibly clean with no prominent stains, adhering dirt, debris, fecal matter, or other foreign material are used for replacement.

(b) Cartons used for egg replacement.

(1) Cartons or containers containing eggs with broken shells that cause the egg white or yolk to spill into the carton shall not be used for replacement and must be removed from sale.

(2) Cartons or containers used for replacement must be from the original packer and must comply with the labeling requirements in accordance with this chapter.

(c) Sanitation during egg replacement. Eggs shall be replaced in the refrigerated display case or removed from the refrigerated display and replaced in an area where the temperature is at or below 45 degrees Fahrenheit, provided:

(1) the replacement area is clean and free of contaminants;

(2) a cart or table approved for food preparation is used during replacement; and

(3) replacement is performed in compliance with requirements in TAC Title 25, Part 1, §§229.161 - 229.171 (relating to Texas Food Establishments).

(d) Training retail employees. All employees of the retailer who replace eggs must be trained by the retailer on the approved procedure for replacement submitted by the retailer and the requirements of this section.

(e) Approval of egg replacement methods. A retail establishment must submit a written procedure for egg replacement to the department for approval that meets the requirements of this section.

(f) Record keeping requirements.

(1) Records shall be maintained at the retail establishment of all eggs replaced in the previous 90 days. Records shall include:

(A) date of replacement;

(B) name of employee(s) conducting egg replacement;

(C) name of packer and Texas egg license number on carton replaced;

(D) grade and size of eggs replaced; and

(E) number of dozen replaced.

(2) Documentation of training for each employee required by this section shall be maintained at the retail establishment.

(3) All records required in this section shall be provided upon request to the department during normal business hours.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 14, 2009.

TRD-200901424

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: May 31, 2009

For further information, please call: (512) 463-4075



## PART 13. PRESCRIBED BURNING BOARD

### CHAPTER 227. CERTIFICATION, RECERTIFICATION, RENEWAL SUBCHAPTER A. CERTIFICATION REQUIREMENTS

#### 4 TAC §227.6

The Prescribed Burning Board (Board) proposes amendments to Chapter 227, §227.6, concerning categories for certification as a certified prescribed burn manager. The amendments are proposed to make the section consistent with categories for certification approved by the Board and already being implemented by the Texas Department of Agriculture, as administrator of the prescribed burning certification program. The amendments also modify existing language in §227.6(b) regarding the regional certification of certified prescribed burn managers, also to be consistent with Board action. Proposed amendments to §227.6 add existing categories of certification for a commercial and private certified prescribed burn manager and provide eligibility requirements for each category. The amendment to new subsection (b)

clarifies the language and clarifies that certified prescribed burn managers are certified on an ecoregion basis.

Jimmy Bush, assistant commissioner for pesticide programs, has determined that for the first five-year period the proposed amended section is in effect there will be no fiscal implications for state or local government as a result of administering or enforcing the amended section. The existing Board rules regarding training and experience required for certification, and the minimum insurance requirements are not changed by the amendments, therefore there will be no additional fees, or requirements different from those currently existing.

Mr. Bush has also determined that for each year of the first five years the proposed amended section is in effect, the public benefit anticipated as a result of administering and enforcing the amended section will be the increase in persons certified as prescribed burn managers, which will result in more trained and experienced persons conducting prescribed burning activities in Texas, and ultimately help reduce the threat of wildfires. There will be no cost to micro-businesses, small businesses, or individuals required to comply with the proposed amendments. The existing Board rules regarding training and experience required for certification, and the minimum insurance requirements are not changed by the amendments, therefore, there will be no additional fees or requirements.

Comments may be submitted to Jimmy Bush, Assistant Commissioner for Pesticide Programs, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under the Natural Resources Code, §153.046, which provides the Board with the authority to establish standards for prescribed burning, and standards for certification, recertification, and training for prescribed burn managers; and §153.041 of the Natural Resources Code, which authorizes the Board to be established within the department and to administer the prescribed burn manager certification program.

The code that will be affected by this proposal is the Natural Resources Code, Chapter 153.

§227.6. *Categories of Certification.*

(a) Prescribed burn managers may be certified in one of the following two categories:

(1) Commercial Certified Prescribed Burn Manager. A commercial certified prescribed burn manager may conduct prescribed burns for hire on property other than that of his or her employer. To obtain certification, an applicant must:

(A) meet training and experience requirements as required by Chapter 228 of this title (relating to Training for Certified Prescribed Burn Managers);

(B) carry or be covered by a general liability insurance policy in the amount of \$1 million per occurrence, and \$2 million aggregate, that:

(i) insures the applicant for damages to persons or property occurring as a result of prescribed burning activities conducted under Natural Resources Code, Chapter 153, and the rules adopted thereunder; and

(ii) covers the commercial certified prescribed burn manager's activities at any location within a designated burn region in the state of Texas where the commercial certified prescribed burn manager is authorized to burn; and

(C) meet all qualifications required under Natural Resources Code, Chapter 153 and the rules adopted thereunder, including continuing education and insurance verification requirements.

(2) Private Certified Prescribed Burn Manager. A private certified prescribed burn manager conducts prescribed burns on property owned by, leased by, or occupied by the private certified prescribed burn manager or that person's employer. An employee qualifies as a private certified prescribed burn manager only if he or she is employed to perform other duties related to the operation and provides labor for the prescribed burning activities, but does not provide the necessary equipment. To obtain certification, an applicant must:

(A) meet training and experience requirements as required by Chapter 228 of this title;

(B) carry or be covered by a general liability insurance policy, in the amount of \$1 million per occurrence, and \$2 million aggregate, that:

(i) insures the private certified prescribed burn manager for damages to any persons or any property occurring as a result of prescribed burning activities conducted under Natural Resources Code, Chapter 153, and the rules adopted thereunder; and

(ii) covers the private certified prescribed burn manager's activities on property owned by, leased by, or occupied by the private certified prescribed burn manager, or property owned by, leased by, or occupied by his or her employer. An employee qualifying under this category may use the insurance policy of his or her employer as long as the employee is a named insured on the policy; and

(C) meet all qualifications required under Natural Resources Code, Chapter 153 and the rules adopted thereunder, including continuing education and insurance verification requirements.

(b) A certified [Certification of the] prescribed burn manager shall be certified to conduct burn activities based on the ecoregion [region] of Texas in which the certified prescribed burn manager has been trained to conduct prescribed burns.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 20, 2009.

TRD-200901470

Dolores Alvarado Hibbs

General Counsel, Texas Department of Agriculture

Prescribed Burning Board

Earliest possible date of adoption: May 31, 2009

For further information, please call: (512) 463-4075



## **TITLE 19. EDUCATION**

### **PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION**

#### **CHAPTER 232. GENERAL CERTIFICATION PROVISIONS**

#### **SUBCHAPTER A. TYPES AND CLASSES OF CERTIFICATES ISSUED**

#### **19 TAC §232.4**

The State Board for Educator Certification (SBEC) proposes an amendment to §232.4, concerning types and classes of certificates issued. The section provides the requirements for the issuance of probationary certificates. The proposed amendment would remove language that allows the SBEC to grant a waiver of the baccalaureate degree requirement for a probationary certificate that requires such a degree. The proposed amendment would also grant an additional year's extension of a probationary certificate to an educator whose contract is terminated, or resigns in lieu of termination, before the end of a school year due to a reduction in force by a school district.

The Texas Education Code (TEC), §21.041, authorizes the SBEC to provide for the regulation of educators and to adopt rules providing for disciplinary proceedings.

Section 232.4 allows the SBEC to grant a waiver of the probationary certificate requirement of a baccalaureate degree. The rule currently establishes no procedures or standards for such a waiver. The SBEC proposes that the rule be amended to delete the provision for granting a waiver of the requirement of a baccalaureate degree for those certificates that require such a degree. Granting such waivers would result in a general reduction in teacher quality standards.

The proposed amendment to §232.4, Probationary Certificates, would delete the phrase "unless otherwise approved by the State Board for Educator Certification (SBEC)" in subsection (c)(1) for those certificates that require such a degree.

Section 232.4(d)(1) provides that a probationary certificate can be extended for no more than two additional annual terms. In the event that a school district is required by its financial situation to conduct a reduction in force, an educator who is so terminated, or resigns in lieu of termination, and is working under a probationary certificate would not be able to complete his or her internship and other requirements for certification and would lose one of his or her allotted probationary terms. In the case of the recent reduction in force by the Dallas Independent School District, there is at least one educator who would lose his last available probationary term. Therefore, the SBEC proposes that an exception be added to subsection (d)(1) that would provide that an educator who is subject to a reduction-in-force termination, or resigns in lieu of termination, would not lose the annual probationary term for that school year.

Grammatical and technical changes would also be made to §232.4 such as the term "bachelor's" degree would be replaced with the term "baccalaureate" degree and the language regarding approved accrediting agencies would be revised to be consistent with current practice. Also, references to 19 TAC Chapter 230 would be updated and the definition for TEA staff would be moved from subsection (f) to subsection (a).

The proposed amendment would have no procedural and reporting implications. Also, the proposed amendment would have no locally maintained paperwork requirements.

Jerel Booker, associate commissioner for educator quality and standards, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Mr. Booker has determined that for the first five-year period the proposed amendment is in effect the public benefit anticipated as a result of the proposed amendment would be to eliminate unnecessary requests for waivers to the SBEC and insure that all

holders of probationary certificates meet minimum quality standards and to prevent certification candidates from losing one of their allowed probationary terms because of a school district's reduction in force. There are no anticipated economic costs to persons or entities required to comply with the proposed amendment.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [sbecrules@tea.state.tx.us](mailto:sbecrules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the Department of Educator Quality and Standards, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Jerel Booker, not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate.

The proposed amendment implements the TEC, §21.041(b)(1), (2), and (4).

#### *§232.4. Probationary Certificates.*

(a) The following definitions apply, when used in this section, unless the rule or context in which the word or phrase is used requires a different definition.

(1) Alternative certification program--An educator preparation program that offers an alternative route to certification as authorized under Chapter 228 of this title (relating to Requirements for Educator Preparation Programs).

(2) Core academic subject--English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, history, geography, or the arts.

(3) Early Childhood--Children ages 3-5.

(4) High-quality professional development--As defined by the No Child Left Behind Act of 2001, 20 United States Code (USC), §7801 (2001, as amended) and its subsequent amendments, which includes, but is not limited to, activities that are sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction; that advance the teacher's understanding of effective instructional strategies; that are developed with participation of teachers, principals, parents, and administrators; and that are regularly evaluated for their impact on increased teacher effectiveness and improved student academic achievement.

(5) Mentoring--As defined under the No Child Left Behind Act of 2001, 20 USC, §7801 and its subsequent amendments, which includes, but is not limited to, activities that consist of structured guid-

ance and regular ongoing support for beginning educators, especially beginning teachers, as part of a developmental induction process designed to assist educators in their professional growth and development. Beginning educator support is to be provided by an experienced educator who has been trained in mentoring.

(6) Texas Education Agency (TEA) staff--Staff of the TEA assigned by the commissioner of education to perform the State Board for Educator Certification's (SBEC's) administrative functions and services.

(b) A probationary certificate may be issued for any class of certificate except educational aide.

(c) A probationary certificate may be issued to an individual who meets the conditions and requirements prescribed in this subsection.

(1) Except as otherwise provided in rules of the SBEC related to certain career and technical education certificates based on skill and experience, the [The] individual must hold[; unless otherwise approved by the State Board for Educator Certification (SBEC);] at least a baccalaureate [bachelor's] degree from an institution of higher education that, when the degree was conferred, was accredited by an [a recognized governmental organization; a recognized regional] accrediting organization [as specified in Chapter 230, Subchapter Y, of this title (relating to Definitions); or an accrediting organization] recognized by the Texas Higher Education Coordinating Board.

(2) The individual must meet appropriate requirements prescribed in §230.413 of this title (relating to General Requirements).

(3) The individual must have been accepted to participate in an approved Texas educator preparation program and has been assigned to serve in the subject area and at the grade level of certification sought.

(4) The individual must receive mentoring and high-quality professional development that is sustained, intensive, and classroom-focused prior to and throughout the assignment.

(5) The individual must pay the fee prescribed in §230.436 of this title (relating to Schedule of Fees for Certification Services).

(6) The individual must submit fingerprints in accordance with §232.905(c) of this title (relating to Submission of Required Information) and the Texas Education Code (TEC), §22.0831.

(7) The teacher in a core academic subject must demonstrate mastery of each subject to be taught:

(A) at the public elementary school level (Early Childhood-Grade 6), by passing the appropriate certification examination as prescribed in Chapter 230, Subchapter B [A], of this title (relating to Assessment of Educators); or

(B) at the public middle or high school level (Grades 7-12):

(i) by passing the appropriate content area certification examination as prescribed in Chapter 230, Subchapter B [A], of this title; or

(ii) by completing an academic major, graduate degree, or coursework equivalent to an academic major that complies with the TEC, §21.050, and comprises not fewer than 24 semester hours, including 12 semester hours of upper division coursework in the subject taught.

(8) The teacher in a special education assignment must demonstrate mastery of each subject to be taught:

(A) at the public elementary school level (Early Childhood-Grade 6):

(i) by passing the appropriate certification examination as prescribed in Chapter 230, Subchapter B [A], of this title for the assignment; and

(ii) by passing a special education Early Childhood-Grade 12 examination; or

(B) at the public middle or high school level (Grades 7-12):

(i) by passing the appropriate content area certification examination as prescribed in Chapter 230, Subchapter B [A], of this title for the assignment or by completing an academic major, graduate degree, or coursework equivalent to an academic major comprised of not fewer than 24 semester hours, including 12 semester hours of upper division coursework in the subject taught; and

(ii) by passing a special education Early Childhood-Grade 12 examination.

(d) A probationary certificate shall be valid for a 12-month period from the date of issuance, except as otherwise provided under this title.

(1) A certificate may be extended for no more than two annual terms following expiration of the initial term. A probationary certificate may be extended for an annual term only if the Texas educator preparation program, recommends extension and certifies that the holder is making satisfactory progress toward standard certification. If an educator is employed under a probationary certificate and is terminated, or resigns in lieu of termination, before the end of the school year due to a reduction in force, that probationary term shall not count as one of the three allowed annual probationary terms.

(2) Without obtaining initial, standard certification, an individual may not serve for more than three 12-month periods while holding:

(A) probationary certificates as described in this subsection;

(B) emergency certificates as specified in §230.512 of this title (relating to Emergency Certificates); or

(C) one-year certificates as specified in Chapter 230, Subchapter O, of this title (relating to Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States) and Chapter 245 of this title (relating to Certification of Educators from Other Countries).

(e) ~~The TEA [Texas Education Agency (TEA)]~~ staff shall establish reasonable procedures to implement this section.

~~[(f) For purposes of this section, "TEA staff" means staff of the TEA assigned by the commissioner of education to perform the SBEC's administrative functions and services.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 20, 2009.  
TRD-200901473



Jerel Booker  
Associate Commissioner, Educator Quality and Standards, Texas  
Education Agency  
State Board for Educator Certification  
Earliest possible date of adoption: May 31, 2009  
For further information, please call: (512) 475-1497



## CHAPTER 233. CATEGORIES OF CLASSROOM TEACHING CERTIFICATES

### 19 TAC §233.1, §233.15

The State Board for Educator Certification (SBEC) proposes amendments to §233.1 and §233.15, concerning categories of classroom teaching certificates. The sections provide the oral proficiency requirements and teaching assignment rules relating to the certificates for languages other than English. The proposed amendments would require an oral proficiency examination for languages other than English (LOTE) certificates. The proposed amendments would also expand the certificates issued for LOTE by adding four new certificates for French, German, and Spanish to be issued no earlier than November 1, 2009, and for Latin to be issued no earlier than January 1, 2010.

The Texas Education Code (TEC), §21.041(b)(1), authorizes the SBEC to propose rules that provide for the regulation of educators. In order to update standards and provide new grade level certifications, the following changes are proposed.

Language would be added to 19 TAC §233.1 to emphasize the need for an oral or communication proficiency examination as part of the certification process for LOTE certificates in proposed new subsection (f).

The proposed amendment to 19 TAC §233.15 would add four new certificates for LOTE in French: Early Childhood-Grade 12 in new subsection (d); German: Early Childhood-Grade 12 in new subsection (e); Latin: Early Childhood-Grade 12 in new subsection (g); and Spanish: Early Childhood-Grade 12 in new subsection (i). The new certificates would allow the holder to teach in a prekindergarten program, in kindergarten, and in Grades 1-12. The new LOTE certificates for French, German, and Spanish would be issued no earlier than November 1, 2009. The new LOTE certificate for Latin would be issued no earlier than January 1, 2010.

The proposed amendments would have no procedural and reporting implications. Also, the proposed amendments would have no locally maintained paperwork requirements.

Jerel Booker, associate commissioner for educator quality and standards, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Mr. Booker has determined that for the first five-year period the proposed amendments are in effect the public and student benefit anticipated as a result of the proposed addition of four new LOTE certificates in French, German, Latin, and Spanish would be having highly-qualified and certified teachers with oral proficiency in LOTE classes at all grade levels. Also, districts would be able to begin or expand current LOTE programs to include additional languages. There are no anticipated economic costs to persons or entities required to comply with the proposed amendments.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [sbecrules@tea.state.tx.us](mailto:sbecrules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the Department of Educator Quality and Standards, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Jerel Booker, not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendments are proposed under the TEC, §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate.

The proposed amendment implements the TEC, §§21.003(a), 21.031(a), and 21.041(b)(1) and (4).

#### §233.1. General Authority.

(a) In this chapter, the State Board for Educator Certification (SBEC) establishes separate certificate categories within the certificate class for the classroom teacher established under §232.2(b)(3) of this title (relating to Classes of Certificates).

(b) For purposes of authorizing a person to be employed by a school district under the Texas Education Code, §21.003(a), a certificate category identifies:

- (1) the content area or the special student population the holder may teach;
- (2) the grade levels the holder may teach; and
- (3) the earliest date the certificate may be issued.

(c) Unless provided otherwise in this title, the content area and grade level of a certificate category as well as the standards underlying the certification examination for each category are aligned with the Texas Essential Knowledge and Skills curriculum adopted by the State Board of Education.

(d) A category includes both a standard certificate and the related emergency or temporary credential. A category may comprise a standard base certificate or a supplemental certificate. A supplemental certificate may be issued only to a person who already holds the appropriate standard base certificate.

(e) A person must satisfy all applicable requirements and conditions under this title and other law to be issued a certificate in a category. A person seeking an initial certification must pass the appropriate

ate grade level of pedagogy and professional responsibility certification examination and the appropriate content subject examination(s) for the certification sought as established by the SBEC. A person completing requirements for a standard certificate using a score on an examination that has been eliminated must apply for certification not later than one year following the examination date upon which the person passed the examination. Exceptions may be granted for a period of two years after the elimination of the examination for catastrophic illness of the educator or an immediate family member or military service of the applicant.

(f) A person seeking a language other than English certificate valid for Early Childhood-Grade 12 specified in §233.15 of this title (relating to Languages Other Than English) must successfully complete an approved oral or communication proficiency examination in the target language in addition to the appropriate grade level of pedagogy and professional responsibility and content subject examinations as specified in subsection (e) of this section.

(g) [(f)] A holder of a certificate valid for Grades 4-8 may teach technology applications in Grades 4-8 if integrated within an academic course or through interdisciplinary methodology in those subjects that the individual is certified to teach. The school district is responsible for ensuring that the educator has the appropriate technology applications knowledge and skills to teach the course(s) to which he or she is assigned. If Technology Applications is taught as a separate course, the educator shall be required to hold an appropriate technology applications certificate as specified in §233.5 of this title (relating to Technology Applications and Computer Science).

#### §233.15. *Languages Other Than English.*

(a) American Sign Language (ASL): Early Childhood-Grade 12. The American Sign Language (ASL): Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2005. The holder of the American Sign Language (ASL): Early Childhood-Grade 12 certificate is eligible to teach American Sign Language in a prekindergarten program, in kindergarten, and in Grades 1-12.

(b) Arabic: Early Childhood-Grade 12. The Arabic: Early Childhood-Grade 12 certificate may be issued no earlier than October 15, 2007. The holder of the Arabic: Early Childhood-Grade 12 certificate is eligible to teach Arabic in a prekindergarten program, in kindergarten, and in Grades 1-12.

(c) Chinese: Early Childhood-Grade 12. The Chinese: Early Childhood-Grade 12 certificate may be issued no earlier than October 15, 2007. The holder of the Chinese: Early Childhood-Grade 12 certificate is eligible to teach Chinese in a prekindergarten program, in kindergarten, and in Grades 1-12.

(d) French: Early Childhood-Grade 12. The French: Early Childhood-Grade 12 certificate may be issued no earlier than November 1, 2009. The holder of the French: Early Childhood-Grade 12 certificate is eligible to teach French in a prekindergarten program, in kindergarten, and in Grades 1-12.

(e) German: Early Childhood-Grade 12. The German: Early Childhood-Grade 12 certificate may be issued no earlier than November 1, 2009. The holder of the German: Early Childhood-Grade 12 certificate is eligible to teach German in a prekindergarten program, in kindergarten, and in Grades 1-12.

(f) [(d)] Japanese: Early Childhood-Grade 12. The Japanese: Early Childhood-Grade 12 certificate may be issued no earlier than October 15, 2007. The holder of the Chinese: Early Childhood-Grade 12 certificate is eligible to teach Japanese in a prekindergarten program, in kindergarten, and in Grades 1-12.

(g) Latin: Early Childhood-Grade 12. The Latin: Early Childhood-Grade 12 certificate may be issued no earlier than January 1,

2010. The holder of the Latin: Early Childhood-Grade 12 certificate is eligible to teach Latin in a prekindergarten program, in kindergarten, and in Grades 1-12.

(h) [(e)] Russian: Early Childhood-Grade 12. The Russian: Early Childhood-Grade 12 certificate may be issued no earlier than October 15, 2007. The holder of the Russian: Early Childhood-Grade 12 certificate is eligible to teach Russian in a prekindergarten program, in kindergarten, and in Grades 1-12.

(i) Spanish: Early Childhood-Grade 12. The Spanish: Early Childhood-Grade 12 certificate may be issued no earlier than November 1, 2009. The holder of the Spanish: Early Childhood-Grade 12 certificate is eligible to teach Spanish in a prekindergarten program, in kindergarten, and in Grades 1-12.

(j) [(f)] Vietnamese: Early Childhood-Grade 12. The Vietnamese: Early Childhood-Grade 12 certificate may be issued no earlier than October 15, 2007. The holder of the Vietnamese: Early Childhood-Grade 12 certificate is eligible to teach Vietnamese in a prekindergarten program, in kindergarten, and in Grades 1-12.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 20, 2009.

TRD-200901474

Jerel Booker

Associate Commissioner, Educator Quality and Standards, Texas  
Education Agency

State Board for Educator Certification

Earliest possible date of adoption: May 31, 2009

For further information, please call: (512) 475-1497



## CHAPTER 241. PRINCIPAL CERTIFICATE

The State Board for Educator Certification (SBEC) proposes amendments to §§241.1, 241.5, 241.10, 241.15, 241.30, and 241.35; the repeal of §§241.20, 241.25, and 241.40; and new §241.20 and §241.25, concerning provisions for the principal certificate. The sections provide for rules that establish requirements for the issuance and renewal of the principal certificate.

The proposed revisions to 19 TAC Chapter 241 would update the rules to reflect current law and add specificity to educator preparation and certification requirements relating to the principal certificate. The proposed amendments, repeals, and new sections result from the SBEC's rule review conducted in accordance with Texas Government Code, §2001.039.

The proposed revisions reflect discussions held during the February 26, 2009, stakeholder meeting. Following is a description of the proposed changes.

Language in 19 TAC §241.1(d) would be amended to clarify that a principal certificate holder may serve as principal or assistant principal in a Texas public school.

Language would be amended in 19 TAC §241.5(a) to clarify that the accrediting organization must be recognized by the Texas Higher Education Coordinating Board. This change is also proposed in new §241.20(2). Language in §241.5(d) would be deleted and moved to §241.10(c) with no substantive rule text changes.

Language would be added in 19 TAC §241.15(d)(5) to clarify that the evaluation processes would be appropriate to the position held. Also, language would be added in subsection (h)(3) to include guidance and counseling programs and services.

Current 19 TAC §241.20 would be repealed and reorganized as proposed new §241.25 with no substantive rule text changes.

Current 19 TAC §241.25 would be repealed and reorganized as proposed new §241.20 and updated to require a valid classroom teaching certificate for the issuance of a standard principal certificate in proposed new paragraph (3). References to SBEC rules that include preparation program requirements would also be updated in proposed new paragraph (5).

Language would be amended in 19 TAC §241.30 to add specificity regarding continuing professional education hours in new subsection (b). Current subsection (f) would be updated and reorganized as new subsection (c) to clarify that voluntary compliance with §241.30 is allowed for holders of certificates issued prior to September 1, 1999. Current §241.30(b)-(e) would be moved to §241.35 or deleted if the provision is obsolete.

Section 241.40 would be repealed because all the implementation dates occurred over six years ago and thus are no longer relevant.

#### *Technical Changes*

Throughout Chapter 241, grammatical and technical changes would be made such as replacing the term "district" with the term "school district" and the term "program" or "preparation program" with the term "educator preparation program." Also, statutory citation references would be updated and standardized to reflect current law and *Texas Register* formatting requirements. Sections would also be restructured for consistency and readability. In addition, references to other SBEC rules would be updated and/or added as part of the proposed revisions to Chapter 241. For example, language in 19 TAC §241.5(c) would be amended to add a reference to 19 TAC Chapter 227, Provisions for Educator Preparation Candidates. Language in §241.10(a) would be amended to add a reference to 19 TAC Chapter 228, Requirements for Educator Preparation Programs.

The proposed rule actions would have no procedural and reporting implications. Also, the proposed rule actions would have no locally maintained paperwork requirements.

Jerel Booker, associate commissioner for educator quality and standards, has determined that for the first five-year period the proposed amendments, repeals, and new sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule actions.

Mr. Booker has determined that for the first five-year period the proposed amendments, repeals, and new sections are in effect the public and student benefit anticipated as a result of the proposed revisions would be the continuation and clarification of requirements for admission to a principal preparation program, preparation program requirements and standards, requirements for the first-time principal in Texas, requirements for renewal of the principal certificate, and the individual assessment process. There are no additional costs to persons or entities required to comply with the proposed amendments, repeals, and new sections.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexi-

bility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [sbecrules@tea.state.tx.us](mailto:sbecrules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendments, repeals, and new sections submitted under the Administrative Procedure Act must be received by the Department of Educator Quality and Standards, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Jerel Booker, not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

#### **19 TAC §§241.1, 241.5, 241.10, 241.15, 241.20, 241.25, 241.30, 241.35**

The amendments and new sections are proposed under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.046(b), which states that the qualifications for certification as a principal must be sufficiently flexible so that an outstanding teacher may qualify by substituting approved experience and professional training for part of the educational requirements; §21.046(c), which states that because an effective principal is essential to school improvement, the SBEC shall ensure that each candidate for certification as a principal is of the highest caliber and that multi-level screening processes, validated comprehensive assessment programs, and flexible internships with successful mentors exist to determine whether a candidate for certification as a principal possesses the essential knowledge, skills, and leadership capabilities necessary for success; §21.046(d), which states that in creating the qualifications for certification as a principal, the SBEC shall consider the knowledge, skills, and proficiencies for principals as developed by relevant national organizations and the State Board of Education; and §21.054(b), which states that continuing education for principals must be based on an individual assessment of the knowledge, skills, and proficiencies necessary to perform successfully as a principal, as identified in §21.046. An individualized professional growth plan shall be developed as a result of the assessment and shall be used exclusively for professional growth purposes. The assessment results and the growth plan may only be released with the approval of the principal assessed. Except as provided by §21.059, each certified principal shall participate in the assessment process and professional growth activities at least once every five years.

The proposed amendments and new sections implement the TEC, §§21.003(a), 21.041(b)(2)-(4), 21.046(b)-(d), and 21.054(b).

#### *§241.1. General Provisions.*

(a) Due to the critical role the principal plays in campus effectiveness and student achievement, and consistent with the Texas Education Code (TEC)<sub>2</sub> §21.046(c), the rules adopted by the State Board for Educator Certification ~~[will]~~ ensure that each candidate for the Principal Certificate is of the highest caliber and possesses the knowledge and skills necessary for success.

(b) As required by the TEC<sub>2</sub> §21.046(b)(1)-(6), the standards identified in §241.15 of this title (relating to Standards Required for the Principal Certificate) emphasize instructional leadership; administration, supervision, and communication skills; curriculum and instruction management; performance evaluation; organization; and fiscal management.

(c) An ~~[Each]~~ individual serving as a principal or assistant principal is expected to actively participate in professional development activities to continually update his or her knowledge and skills. Currency in best practices and research as related to both campus leadership and student learning is essential.

(d) The holder of the Principal Certificate issued under the provisions of this chapter may serve as a principal or assistant principal in a Texas public ~~[elementary, middle, or secondary]~~ school.

*§241.5. Minimum Requirements for Admission to a Principal Preparation Program.*

(a) Prior to admission to an educator ~~[a]~~ preparation program leading to the Principal Certificate, an individual must hold a baccalaureate degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board.

(b) An educator preparation program ~~[Preparation programs]~~ may adopt requirements for admission in addition to those required in subsection (a) of this section.

(c) The educator preparation program ~~[entity]~~ shall implement procedures that include screening activities to determine the candidate's appropriateness for the Principal Certificate as identified in Chapter 227 of this title (relating to Provisions for Educator Preparation Candidates).

~~[(d) Each preparation program must develop and implement specific criteria and procedures that allow admitted individuals to substitute experience and/or professional training directly related to the standards identified in §241.15 of this title (relating to Standards for the Principal Certificate) for part of the preparation requirements.]~~

*§241.10. Preparation Program Requirements.*

(a) The standards identified in §241.15 of this title (relating to Standards Required for the Principal Certificate) and Chapter 228 of this title (relating to Requirements for Educator Preparation Programs) shall be the curricular basis for an educator preparation program ~~[programs]~~ preparing candidates ~~[individuals]~~ to be principals. The educator preparation program ~~[Entities]~~ shall establish benchmarks and structured assessments of the candidate's progress and needed growth throughout the educator preparation program based on the standards identified in §241.15 of this title.

(b) The principal preparation program shall include a ~~[Structured,]~~ field-based practicum ~~[with experiences at diverse types of campuses must be focused on actual experiences with each of the standards identified in §241.15 of this title]~~ whereby a candidate ~~[candidates]~~ must demonstrate proficiency in each of the standards identified in §241.15 of this title.

(c) An educator preparation program may develop and implement specific criteria and procedures that allow a candidate to substitute related experience and/or professional training directly related to

the standards identified in §241.15 of this title for part of the preparation requirements.

*§241.15. Standards Required for the Principal Certificate.*

(a) Principal Certificate Standards. The knowledge and skills identified in this section must be used by an educator preparation program ~~[programs]~~ in the development of curricula and coursework and ~~[will be used]~~ by the State Board for Educator Certification as the basis for developing the examinations ~~[assessments]~~ required to obtain the standard ~~[Standard]~~ Principal Certificate. The ~~[These]~~ standards ~~[must]~~ also serve as the foundation for the individual assessment, professional growth plan, and continuing professional education activities required by §241.30 of this title (relating to Requirements to Renew the Standard Principal Certificate).

(b) Learner-Centered Values and Ethics of Leadership. A principal is an educational leader who promotes the success of all students by acting with integrity and fairness<sub>2</sub> and in an ethical manner. At the campus level, a principal understands, values, and is able to:

(1) model and promote the highest standard of conduct, ethical principles, and integrity in decision making, actions, and behaviors<sub>2</sub> [-]

(2) implement policies and procedures that encourage all campus personnel to comply with Chapter 247 of this title (relating to Educators' Code of Ethics ~~[and Standards Practices for Texas Educators]~~)<sub>2</sub> [-]

(3) model and promote the continuous and appropriate development of all learners in the campus community<sub>2</sub> [-]

(4) promote awareness of learning differences, multicultural awareness, gender sensitivity, and ethnic appreciation in the campus community; and [-]

(5) articulate the importance of education in a free democratic society.

(c) Learner-Centered Leadership and Campus Culture. A principal is an educational leader who promotes the success of all students and shapes campus culture by facilitating the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by the school community. At the campus level, a principal understands, values, and is able to:

(1) create a campus culture that sets high expectations, promotes learning, and provides intellectual stimulation for self, students, and staff<sub>2</sub> [-]

(2) ensure that parents and other members of the community are an integral part of the campus culture<sub>2</sub> [-]

(3) use ~~[utilize]~~ strategies to ensure the development of collegial relationships and effective collaboration of campus staff<sub>2</sub> [-]

(4) respond appropriately to the diverse needs of individuals within the community in shaping the campus culture<sub>2</sub> [-]

(5) use ~~[utilize]~~ emerging issues, trends, demographic data, knowledge of systems, campus climate inventories, student learning data, and other information to develop a campus vision and plan to implement the vision<sub>2</sub> [-]

(6) facilitate the collaborative development of a shared campus vision that focuses on teaching and learning<sub>2</sub> [-]

(7) facilitate the collaborative development of a plan in which objectives and strategies to implement the campus vision are clearly articulated<sub>2</sub> [-]

(8) align financial, human, and material resources to support the implementation of the campus vision; [-]

(9) establish processes to assess and modify the plan of implementation to ensure achievement of the campus vision; [-]

(10) support innovative thinking and risk-taking efforts of everyone within the school community and view unsuccessful experiences as learning opportunities; and [-]

(11) acknowledge, recognize, and celebrate the contributions of students, staff, parents, and community members toward the realization of the campus vision.

(d) **Learner-Centered Human Resources Leadership and Management.** A principal is an educational leader who promotes the success of all students by implementing a staff evaluation and development system to improve the performance of all staff members, selects and implements appropriate models for supervision and staff development, and applies the legal requirements for personnel management. At the campus level, a principal understands, values, and is able to:

(1) collaboratively develop, implement, and revise a comprehensive and on-going plan for professional development of campus staff ~~that~~ ~~[which]~~ addresses staff needs and aligns professional development with identified goals; [-]

(2) facilitate the application of adult learning and motivation theory to all campus professional development, including the use of appropriate content, processes, and contexts; [-]

(3) ensure the effective implementation of the professional development plan by allocation of appropriate time, funding, and other needed resources; [-]

(4) implement effective, legal, and appropriate strategies for the recruitment, selection, assignment, and induction of campus staff; [-]

(5) ~~use~~ ~~[utilize]~~ formative and summative evaluation processes ~~appropriate to the position held~~ to further develop the knowledge and skills of campus staff; [-]

(6) diagnose and improve campus organizational health and morale through the implementation of strategies designed to provide on-going support to campus staff members; and [-]

(7) engage in on-going, meaningful, and professional growth activities to further develop necessary knowledge and skills [-] and to model lifelong learning.

(e) **Learner-Centered Communications and Community Relations.** A principal is an educational leader who promotes the success of all students by collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources. At the campus level, a principal understands, values, and is able to:

(1) demonstrate effective communication through oral, written, auditory, and nonverbal expression; [-]

(2) ~~use~~ ~~[utilize]~~ effective conflict management and group consensus building skills; [-]

(3) implement effective strategies to systematically gather input from all campus stakeholders; [-]

(4) develop and implement strategies for effective internal and external communications; [-]

(5) develop and implement a comprehensive program of community relations, which ~~uses~~ ~~[utilizes]~~ strategies that will effectively

involve and inform multiple constituencies, including the media; [-]

(6) provide varied and meaningful opportunities for parents to be engaged in the education of their children; [-]

(7) establish partnerships with parents, businesses, and other groups in the community to strengthen programs and support campus goals; and [-]

(8) respond to pertinent political, social, and economic issues that exist in the internal and external environment.

(f) **Learner-Centered Organizational Leadership and Management.** A principal is an educational leader who promotes the success of all students through leadership and management of the organization, operations, and resources for a safe, efficient, and effective learning environment. At the campus level, a principal understands, values, and is able to:

(1) implement appropriate management techniques and group processes to define roles, assign functions, delegate authority, and determine accountability for campus goal attainment; [-]

(2) gather and organize information from a variety of sources for use in creative and effective campus decision making; [-]

(3) frame, analyze, and creatively resolve campus problems using effective ~~problem-solving~~ ~~[problem solving]~~ techniques to make timely, ~~high-quality~~ ~~[high quality]~~ decisions; [-]

(4) develop, implement, and evaluate change processes for organizational effectiveness; [-]

(5) implement strategies that enable the physical plant, equipment, and support systems to operate safely, efficiently, and effectively to maintain a conducive learning environment; [-]

(6) apply local, state, and federal laws and policies to support sound decisions while considering implications related to all school operations and programs; [-]

(7) acquire, allocate, and manage human, material, and financial resources according to ~~school~~ district policies and campus priorities; [-]

(8) collaboratively plan and effectively manage the campus budget; [-]

(9) ~~use~~ ~~[utilize]~~ technology to enhance school management; and [-]

(10) ~~use~~ ~~[utilize]~~ effective planning, time management, and organization of work to maximize attainment of ~~school~~ district and campus goals.

(g) **Learner-Centered Curriculum Planning and Development.** A principal is an educational leader who promotes the success of all students by facilitating the design and implementation of curricula and strategic plans that enhance teaching and learning; alignment of curriculum, curriculum resources, and assessment; and the use of various forms of assessment to measure student performance. At the campus level, a principal understands, values, and is able to:

(1) use emerging issues, occupational and economic trends, demographic data, student learning data, motivation theory, learning theory, legal requirements, and other information as a basis for campus curriculum planning; [-]

(2) facilitate the use of sound research-based practice in the development and implementation of campus curricular, co-curricular, and extracurricular programs; [-]

(3) facilitate campus participation in collaborative school district planning, implementation, monitoring, and curriculum revision ~~[of curriculum]~~ to ensure appropriate scope, sequence, content, and alignment; [-]

(4) facilitate the use and integration of technology, telecommunications, and information systems to enrich the campus curriculum; and [-]

(5) facilitate the effective coordination of campus curricular, co-curricular, and extracurricular programs in relation to other school district programs.

(h) Learner-Centered Instructional Leadership and Management. A principal is an educational leader who promotes the success of all students by advocating, nurturing, and sustaining a campus culture and instructional program conducive to student learning and staff professional growth. At the campus level, a principal understands, values, and is able to:

(1) facilitate the development of a campus learning organization that supports instructional improvement and change through an on-going study of relevant research and best practice; [-]

(2) facilitate the implementation of sound, research-based instructional strategies, decisions, and programs in which multiple opportunities to learn and be successful are available to all students; [-]

(3) implement special campus programs to ensure that all students are provided quality, flexible instructional programs and services to meet individual student needs (i.e., guidance and counseling programs and services); [-]

(4) use ~~[utilize]~~ interpretation of formative and summative data from a comprehensive student assessment program to develop, support, and improve campus instructional strategies and goals; [-]

(5) facilitate the use and integration of technology, telecommunications, and information systems to enhance learning; [-]

(6) facilitate the implementation of sound, research-based theories and techniques of classroom management, student discipline, and school safety to ensure an environment conducive to teaching and learning; [-]

(7) facilitate the development, implementation, evaluation, and refinement of student activity programs to fulfill academic, developmental, social, and cultural needs; and [-]

(8) acquire and allocate sufficient instructional resources on the campus in the most equitable manner to support and enhance student learning.

§241.20. Requirements for the Issuance of the Standard Principal Certificate.

To be eligible to receive the standard Principal Certificate, a candidate must:

(1) successfully complete the appropriate examinations required under Chapter 230, Subchapter B, of this title (relating to Assessment of Educators);

(2) hold a master's degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board;

(3) hold a valid classroom teaching certificate;

(4) have two creditable years of teaching experience as a classroom teacher, as defined in Chapter 153, Subchapter CC, of this

title (relating to Commissioner's Rules on Creditable Years of Service) and the Texas Education Code, §5.001(2); and

(5) successfully complete a principal preparation program that meets the requirements of §241.10 of this title (relating to Preparation Program Requirements), §241.15 of this title (relating to Standards Required for the Principal Certificate), Chapter 227 of this title (relating to Provisions for Educator Preparation Candidates), and Chapter 228 of this title (relating to Requirements for Educator Preparation Programs).

§241.25. Requirements for the First-Time Principal in Texas.

(a) A principal or assistant principal employed for the first time as a campus administrator (including the first time in the state) shall participate in an induction period of at least one year.

(b) The induction period should incorporate the principal assessment and professional growth requirements contained in §241.35 of this title (relating to Principal Assessment).

(c) The induction period should be a structured, systemic process for assisting the new principal or assistant principal in further developing skills in guiding the everyday operation of a school, adjusting to the particular culture of a school district, and developing a personal awareness of self in the campus administrator role. Mentoring support must be an integral component of the induction period.

§241.30. Requirements to Renew the Standard Principal Certificate.

(a) ~~An [Each]~~ individual who holds a standard principal or mid-management administrator certificate ~~[the Standard Principal or Mid-Management Certificate, issued on or after September 1, 1999,]~~ is subject to Chapter 232, Subchapter B, ~~[R]~~ of this title (relating to Certificate Renewal and Continuing Professional Education Requirements); ~~except that 200 hours of continuing professional education must be completed every five years].~~

(b) To satisfy the requirements of this section, an individual must complete 200 clock-hours of continuing professional education every five years directly related to the standards in §241.15 of this title (relating to Standards Required for the Principal Certificate).

(c) An individual who holds a valid Texas professional administrator certificate issued prior to September 1, 1999, may voluntarily comply with the requirements for continuing professional education in this section.

[(b) Individuals holding the Standard Principal Certificate or Standard Mid-Management and who are employed as a principal or assistant principal must select an assessment from the list approved under §241.35 of this title and should participate in the assessment the first year of employment as a principal or assistant principal. Follow-up assessments should be completed in the first year of each five-year period of employment. The individual is solely responsible for selecting the assessment used to satisfy the requirements of this subsection.]

[(c) Based on the results of the assessment required under subsection (b) of this section, each individual shall develop a professional growth plan which is directly related to the standards identified in §241.15 of this title (relating to Standards for the Principal Certificate), and must allow for the prioritization of professional growth needs.]

[(d) Consistent with TEC §21.054(b), the results of the individual assessment and the professional growth plan shall be used exclusively for professional growth purposes, and may only be released with the approval of the individual assessed.]

[(e) An individual who holds a valid Texas professional administrator certificate issued prior to September 1, 1999, and who is employed as a principal or assistant principal or fulfills the functions of a principal or assistant principal:]

~~[(1) must complete an assessment approved under §241.35 of this title (relating to Assessment Process Definition and Approval of Individual Assessments) and develop a professional growth plan as described in subsection (c) no later than August 31, 2004 and once in each subsequent five year period of employment as a principal or assistant principal; and]~~

~~[(2) may voluntarily comply with the requirements of subsection (a) under procedures adopted by the executive director under Subchapter R, §232.810 of this title (relating to Voluntary Renewal of Current Texas Educators). The executive director shall report to the employing school district those individuals who choose to renew under this subsection.]~~

~~[(f) An individual who holds a valid Texas professional administrator certificate issued prior to September 1, 1999, and who is not employed as an assistant principal or principal may voluntarily comply with the requirements of this section under procedures adopted by the executive director under Subchapter R, §232.810 of this title.]~~

*§241.35. Principal Assessment [Process Definition and Approval of Individual Assessments].*

(a) The principal ~~[individual]~~ assessment process determines primarily through a series of job-like activities the presence of knowledge and skills directly related to the standards identified in §241.15 of this title (relating to Standards Required for the Principal Certificate). The assessment process will include a structured self-assessment and may also include other job-related activities as appropriate. Job-related activities must also determine the presence of skills related to the standards identified in §241.15 of this title. The assessment must be conducted and completed within 30 calendar days [a 30-day time period].

(b) An individual holding a principal or mid-management administrator certificate and who is employed as a principal or assistant principal must select an assessment from the list approved under subsection (h) of this section and should participate in the assessment the first year of employment as a principal or assistant principal. Follow-up assessments should be completed in the first year of each five-year period of employment. The individual is solely responsible for selecting the assessment used to satisfy the requirements of this subsection.

(c) Based on the results of the assessment required under subsection (b) of this section, an individual shall develop a professional growth plan that is directly related to the standards identified in §241.15 of this title and must allow for the prioritization of professional growth needs.

(d) Consistent with the Texas Education Code, §21.054(b), the results of the individual assessment and the professional growth plan shall be used exclusively for professional growth purposes and may only be released with the approval of the individual assessed.

(e) An individual who holds a valid Texas professional administrator certificate issued prior to September 1, 1999, and who is not employed as a principal or assistant principal may voluntarily comply with the requirements of this section under procedures implemented by the Texas Education Agency (TEA) staff under §232.810 of this title (relating to Voluntary Renewal of Current Texas Educators).

(f) ~~[(b)]~~ The TEA staff ~~[executive director]~~ shall implement procedures to approve the individual assessments that may be used ~~[to satisfy §241.30(d) of this title (relating to Requirements to Renew the Standards Principal Certificate)]~~. The TEA staff ~~[executive director]~~ shall implement ~~[adopt]~~ procedures to receive and investigate complaints that allege noncompliance with this section, including available sanctions against the assessment provider if the investigation determines noncompliance has occurred.

(g) ~~[(e)]~~ Upon completion, the assessment provider must report to TEA staff the results of all ~~[SBEC the]~~ individuals who have completed an approved assessment.

(h) ~~[(d)]~~ The following characterize an appropriate assessment and must be included in the approval criteria ~~[adopted by the executive director]~~:

(1) performance ~~that~~ is analyzed solely on the presence of defined skills embedded in the assessment activities;

(2) standards of performance on defined skills that are measured in a consistent manner;

(3) a minimum of two assessors are to integrate their analyses of data for the individual being assessed;

(4) assessors are to be chosen by the assessment provider and must successfully demonstrate both a strong familiarity with the principalship and leadership skills and are in no way involved in evaluation activities or employment decisions affecting the principal being assessed;

(5) assessors are trained by the assessment provider and must successfully demonstrate acceptable performance for the following assessor duties:

(A) implementation of assessment process procedures;

(B) analysis of performance of individuals being assessed in job-like activities;

(C) integration of data from job-like and job-related activities; and

(D) development of detailed feedback related to the standards identified in §241.15 of this title; ~~[-]~~

(6) structured feedback that provides detailed results for each of the standards assessed, compares the results with the self-assessment required under this section, and includes a series of recommendations identifying specific professional development activities that should be considered in the development of the professional growth plan required under subsection (d) of this section ~~[§241.30(d) of this title]~~; and

(7) documentation that verifies that the assessment process has been field tested for appropriate content and design.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 20, 2009.

TRD-200901475

Jerel Booker

Associate Commissioner, Educator Quality and Standards, Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: May 31, 2009

For further information, please call: (512) 475-1497



**19 TAC §§241.20, 241.25, 241.40**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the State Board for Educator Certification or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeals are proposed under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.046(b), which states that the qualifications for certification as a principal must be sufficiently flexible so that an outstanding teacher may qualify by substituting approved experience and professional training for part of the educational requirements; §21.046(c), which states that because an effective principal is essential to school improvement, the SBEC shall ensure that each candidate for certification as a principal is of the highest caliber and that multi-level screening processes, validated comprehensive assessment programs, and flexible internships with successful mentors exist to determine whether a candidate for certification as a principal possesses the essential knowledge, skills, and leadership capabilities necessary for success; §21.046(d), which states that in creating the qualifications for certification as a principal, the SBEC shall consider the knowledge, skills, and proficiencies for principals as developed by relevant national organizations and the State Board of Education; and §21.054(b), which states that continuing education for principals must be based on an individual assessment of the knowledge, skills, and proficiencies necessary to perform successfully as a principal, as identified in §21.046. An individualized professional growth plan shall be developed as a result of the assessment and shall be used exclusively for professional growth purposes. The assessment results and the growth plan may only be released with the approval of the principal assessed. Except as provided by §21.059, each certified principal shall participate in the assessment process and professional growth activities at least once every five years.

The proposed repeals implement the TEC, §§21.003(a), 21.041(b)(2)-(4), 21.046(b)-(d), and 21.054(b).

§241.20. *Requirements for the First-Time Principal in Texas.*

§241.25. *Requirements for the Issuance of the Standard Principal Certificate.*

§241.40. *Implementation Dates.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Jerel Booker

Associate Commissioner, Educator Quality and Standards, Texas Education Agency

State Board for Educator Certification

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## CHAPTER 242. SUPERINTENDENT CERTIFICATE

The State Board for Educator Certification (SBEC) proposes new §242.1; amendments to §§242.5, 242.10, 242.15, 242.20, 242.25, and 242.30; and the repeal of §242.35, concerning provisions for the superintendent certificate. The sections provide for rules that establish requirements for the issuance and renewal of the superintendent certificate.

The proposed revisions to 19 TAC Chapter 242 would update the rules to reflect current law and add specificity to educator preparation and certification requirements relating to the superintendent certificate. The proposed new section, amendments, and repeal result from the SBEC's rule review conducted in accordance with Texas Government Code, §2001.039.

The proposed revisions reflect discussions held during the February 26, 2009, stakeholder meeting. Following is a description of the proposed changes.

Proposed new 19 TAC §242.1 would be added to address the critical role of the superintendent, professional development, and positions in which the holder of the superintendent certificate may serve. The addition of this new section would be consistent with Chapter 241, Principal Certificate.

Section 242.5 would be reorganized, and language would be added to specify that, at a minimum, a master's degree would be required. The proposed change would also specify that the degree must be from an accredited institution of higher education that, at that time, was accredited or approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board. In addition, language that allows for the substitution of experience and/or professional training for part of the preparation requirements in current subsection (c) would be moved to §242.10 as new subsection (c).

Language would be added in §242.15 to clarify in subsection (a) that the standards would be the basis for the requirements in §242.30, to clarify in subsection (d)(6) that the evaluation processes would be appropriate to the position held, to include guidance and counseling programs and services in subsection (i)(5), and to clarify that superintendent learner-centered activities would be at the school district level.

Current 19 TAC §242.20 would be amended to further clarify the requirements for a superintendent certificate. The section title would also be amended for clarification.

Section 242.30 would be reorganized to clarify the requirements for the renewal of a superintendent certificate. Current subsection (d) would be deleted since the provision is obsolete. The section title would be amended for clarification.

Section 242.35 would be repealed because the implementation dates occurred over eight years ago and thus are no longer relevant.

### *Technical Changes*

Throughout Chapter 242, numerous grammatical and technical changes would be made where appropriate. Also, statutory citation references would be updated and standardized to reflect current law and *Texas Register* formatting requirements. Sections would also be restructured for consistency and readability.

The proposed rule actions would have no procedural and reporting implications. Also, the proposed rule actions would have no locally maintained paperwork requirements.



Jerel Booker, associate commissioner for educator quality and standards, has determined that for the first five-year period the proposed new section, amendments, and repeal are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule actions.

Mr. Booker has determined that for the first five-year period the proposed new section, amendments, and repeal are in effect the public and student benefit anticipated as a result of the proposed revisions would be the continuation and clarification of requirements for admission to a superintendent preparation program, preparation program requirements and standards, requirements for the first-time superintendent in Texas, and requirements for renewal of the superintendent certificate. There are no additional costs to persons or entities required to comply with the proposed new section, amendments, and repeal.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [sbecrules@tea.state.tx.us](mailto:sbecrules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed new section, amendments, and repeal submitted under the Administrative Procedure Act must be received by the Department of Educator Quality and Standards, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Jerel Booker, not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

**19 TAC §§242.1, 242.5, 242.10, 242.15, 242.20, 242.25, 242.30**

The new section and amendments are proposed under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; and §21.046(a), which states that the qualifications for superintendent must permit a candidate for certification to substitute management training or experience for part of the educational experience.

The proposed new section and amendments implement the TEC, §§21.003(a), 21.041(b)(2)-(4), and 21.046(a).

§242.1. General Provisions.

(a) Due to the critical role the superintendent plays in school district effectiveness and student achievement, the rules adopted by the State Board for Educator Certification ensure that each candidate for the Superintendent Certificate is of the highest caliber and possesses the knowledge and skills necessary for success.

(b) As required by the Texas Education Code, §21.046(b)(1)-(6), the standards identified in §242.15 of this title (relating to Standards Required for the Superintendent Certificate) emphasize instructional leadership; administration, supervision, and communication skills; curriculum and instruction management; performance evaluation; organization; and fiscal management.

(c) An individual serving as a superintendent is expected to actively participate in professional development activities to continually update his or her knowledge and skills. Currency in best practices and research as related to both school district leadership and student learning is essential.

(d) The holder of the Superintendent Certificate issued under the provisions of this chapter may serve as a superintendent, principal, or assistant principal in a Texas public school.

§242.5. Minimum Requirements for Admission to a Superintendent Preparation Program.

(a) Prior to admission to an educator preparation program leading to the Superintendent Certificate, an individual must hold, at a minimum, a master's degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board.

(b) An educator preparation program may adopt requirements for admission in addition to those required in subsection (a) of this section.

(c) The educator preparation program shall implement procedures that include screening activities to determine the candidate's appropriateness for the Superintendent Certificate as identified in Chapter 227 of this title (relating to Provisions for Educator Preparation Candidates).

~~[(a) As administered and determined by the program, satisfactory performance on an assessment that is based upon characteristics of effective educational leaders.]~~

~~[(b) Hold, at a minimum, a Standard Principal Certificate or the equivalent issued under this title or by another state or country, provided the individual performed satisfactorily on a principal certificate examination similar to and at least as rigorous as that required under this title.]~~

~~[(c) Each preparation program must develop and implement specific criteria and procedures that allow admitted individuals to substitute experience and/or professional training directly related to the standards identified in §242.15 of this title (relating to Standards Required for the Superintendent Certificate) for part of the preparation requirements.]~~

§242.10. Preparation Program Requirements.

(a) The design of the superintendent [superintendency] preparation program resides with the State Board for Educator Certification-approved [SBEC-approved] educator preparation program [program(s)] and curricula and coursework shall be based upon the standards in §242.15 of this title (relating to Standards Required for the Superintendent Certificate) and Chapter 228 of this title (relating to Requirements for Educator Preparation Programs).

(b) The superintendent preparation program [superintendency] shall include a field-based practicum whereby candidates must demonstrate proficiency in each of the [eight] standards identified in §242.15 of this title.

(c) An educator preparation program may develop and implement specific criteria and procedures that allow a candidate to substitute related experience and/or professional training directly related to

the standards identified in §242.15 of this title for part of the preparation requirements.

*§242.15. Standards Required for the Superintendent Certificate.*

(a) Superintendent Certificate Standards. The knowledge and skills identified in this section must be used by an educator preparation program in the development of curricula and coursework and the State Board for Educator Certification [the Board] as the basis for developing the examinations [assessment(s)] required to obtain the standard [Standard] Superintendent Certificate. The standards also serve as the foundation for the individual assessment, professional growth plan, and continuing professional education activities required by §242.30 of this title (relating to Requirements to Renew the Standard Superintendent Certificate).

(b) Learner-Centered Values and Ethics of Leadership. A superintendent is an educational leader who promotes the success of all students by acting with integrity, fairness, and in an ethical manner. A superintendent understands, values, and is able to:

(1) model [Model] and promote the highest standard of conduct, ethical principles, and integrity in decision making, actions, and behaviors; [-]

(2) implement [Implement] policies and procedures that encourage all school district personnel to comply with Chapter 247 [§247.2] of this title [-] (relating to Educators' [the] Code of Ethics [and Standard Practices for Texas Educators]); [-]

(3) serve [Serve] as an articulate spokesperson for the importance of education in [to] a free democratic society; [-]

(4) enhance [Enhance] teaching and learning by participating [participation] in quality professional development activities, study of current professional literature and research, and interaction with the school district's staff and students; [-]

(5) maintain [Maintain] personal physical and emotional wellness; and [-]

(6) demonstrate [Demonstrate] the courage to be a champion for children.

(c) Learner-Centered Leadership and School District Culture. A superintendent is an educational leader who promotes the success of all students and shapes school district culture by facilitating the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by the school community. A superintendent understands, values, and is able to:

(1) establish [Establish] and support a school district culture that promotes learning, high expectations, and academic rigor for self, student, and staff performance; [-]

(2) facilitate [Facilitate] the development and implementation of a shared vision that focuses on teaching and learning; [-]

(3) implement [Implement] strategies for the involvement of all stakeholders in the planning processes and facilitate planning between constituencies; [-]

(4) conduct [Conduct] and analyze school district/campus [district/school] climate inventories for effective and [-] responsive decision making; [decision-making]

(5) institute [Institute] and monitor planning processes that include strategies designed to ensure the accomplishment of school district goals and objectives to achieve the school district's vision; [-]

(6) facilitate [Facilitate] the use and allocation of all available resources to support the implementation of the school district's vision and goals; [-]

(7) recognize [Recognize] and celebrate contributions of staff and community toward realization of the school district's vision; [-]

(8) demonstrate [Demonstrate] an awareness of emerging issues and trends affecting the education community; [-]

(9) encourage [Encourage] and model innovative thinking and risk taking [risk-taking] and view problems as learning opportunities; and [-]

(10) promote [Promote] multicultural awareness, gender sensitivity, and the appreciation of diversity in the education community.

(d) Learner-Centered Human Resources Leadership and Management. A superintendent is an educational leader who promotes the success of all students by implementing a staff evaluation and development system to improve the performance of all staff members, selects and implements appropriate models for supervision and staff development, and applies the legal requirements for personnel management. A superintendent understands, values, and is able to:

(1) develop [Develop], implement, and evaluate a comprehensive professional development plan designed specifically to address areas of identified school district, campus, and/or staff need; [-]

(2) facilitate [Facilitate] the application of adult learning principles to all professional development activities, including the use of relevant issues and tasks and the use of support and follow-up strategies to facilitate implementation; [-]

(3) implement [Implement] strategies to enhance professional capabilities at the school district and campus level to ensure support for a continuum of services and programming; [-]

(4) deliver [Deliver] effective presentations and facilitate the learning of both small and large groups; [-]

(5) implement [Implement] effective strategies for the recruitment, selection, induction, development, and promotion of staff; [-]

(6) develop [Develop] and institute comprehensive staff evaluation models appropriate to the position held that include both formative and summative assessment and appraisal strategies; [-]

(7) demonstrate [Demonstrate] use of school district and staff evaluation data for personnel policy development and decision making; [-]

(8) demonstrate [Demonstrate] and apply knowledge of certification requirements and standards; and [-]

(9) diagnose [Diagnose] and improve organizational health/morale by the implementation of strategies and programs designed to provide on-going assistance and support to personnel.

(e) Learner-Centered Policy and Governance. A superintendent is an educational leader who promotes the success of all students by understanding, responding to, and influencing the larger political, social, economic, legal, and cultural context and by working with the board of trustees to define mutual expectations, policies, and standards. A superintendent understands, values, and is able to:

(1) define [Define] and apply the general characteristics of internal and external political systems to the educational organization; [-]

(2) demonstrate [Demonstrate] and apply appropriate knowledge of legal issues affecting education; [-]

(3) provide [Provide] leadership in defining superintendent and board of trustees roles, mutual expectations, and effective superintendent-board of trustees working relationships; [-]

(4) determine [Determine] the political, economic, and social aspects and/or needs of groups in the community, and those of the community at large, for effective and responsive decision making; [-]

(5) prepare [Prepare] and recommend school district policies to improve student learning and school district performance in compliance with state and federal requirements; [-]

(6) use [Utilize] legal systems to protect the rights of students and staff and to improve learning opportunities; [-]

(7) apply [Apply] laws, policies, and procedures fairly, wisely, and considerately; and [-]

(8) access [Access] state and national political systems to provide input on critical educational issues.

(f) Learner-Centered Communications and Community Relations. A superintendent is an educational leader who promotes the success of all students by collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources. A superintendent understands, values, and is able to:

(1) develop [Develop] and implement an effective and comprehensive school district internal and external communications plan and public relations program; [-]

(2) analyze [Analyze] community and school district structures and identify major opinion leaders and their relationships to school district goals and programs; [-]

(3) establish [Establish] partnerships with parents, area businesses, institutions of higher education, and community groups to strengthen programs and support school district goals; [-]

(4) implement [Implement] effective strategies to systematically communicate with and gather input from all stakeholders in the school district; [-]

(5) communicate [Communicate] effectively with all social, cultural, ethnic, and racial groups in the school district and community; [-]

(6) develop [Develop] and use [utilize] formal and informal techniques to obtain accurate perceptions of the school district staff, parents, and community; [-]

(7) use [Use] effective consensus-building [consensus building] and conflict-management [conflict management] skills; [-]

(8) articulate [Articulate] the school district's vision and priorities to the community and to the media; [-]

(9) influence [Influence] the media by using [utilizing] proactive communication strategies that serve to enhance and promote the school district's vision; [-]

(10) communicate [Communicate] an articulate position on educational issues; and [-]

(11) demonstrate [Demonstrate] effective and forceful writing, speaking, and active listening skills.

(g) Learner-Centered Organizational Leadership and Management. A superintendent is an educational leader who promotes the success of all students by leadership and management of the organization, operations, and resources for a safe, efficient, and effective learning environment. A superintendent understands, values, and is able to:

(1) implement [Implement] appropriate management techniques and group processes to define roles, assign functions, delegate effectively, and determine accountability for goal attainment; [-]

(2) implement [Implement] processes for gathering, analyzing, and using data for informed decision making; [decision-making]; [-]

(3) frame [Frame], analyze, and resolve problems using appropriate problem-solving techniques and decision-making skills; [-]

(4) develop [Develop], implement, and evaluate change processes for organizational effectiveness; [-]

(5) implement [Implement] strategies that enable the physical plant, equipment, and support systems to operate safely, efficiently, and effectively to maintain a conducive learning environment throughout the school district; [-]

(6) apply [Apply] legal concepts, regulations, and codes for school district operations; [-]

(7) perform [Perform] effective budget planning, management, account auditing, and monitoring and establish school district procedures for accurate and effective fiscal reporting; [-]

(8) acquire [Acquire], allocate, and manage resources according to school district vision and priorities; [-]

(9) manage [Manage] one's own time and the time of others to maximize attainment of school district goals; and [-]

(10) use [Use] technology to enhance school district operations.

(h) Learner-Centered Curriculum Planning and Development. A superintendent is an educational leader who promotes the success of all students by facilitating the design and implementation of curricula and strategic plans that enhance teaching and learning; alignment of curriculum, curriculum resources, and assessment; and the use of various forms of assessment to measure student performance. A superintendent understands, values, and is able to:

(1) apply [Apply] understanding of pedagogy, cognitive development, and child and adolescent growth and development to facilitate effective school district curricular decisions; [-]

(2) implement [Implement] curriculum planning methods to anticipate and respond to occupational and economic trends and to achieve optimal student learning; [-]

(3) implement [Implement] core curriculum design and delivery systems to ensure instructional continuity and instructional integrity across the school district; [-]

(4) develop [Develop] and implement collaborative processes for the systematic assessment and renewal of the curriculum to ensure appropriate scope, sequence, content, and alignment; [-]

(5) evaluate [Evaluate] and provide direction for improving school district curriculum in ways that are based upon sound, research-based practices; [-]

(6) facilitate [Facilitate] the use of technology, telecommunications, and information systems to enrich the school district curriculum and enhance learning for all students; [-]

(7) facilitate [Facilitate] the use of creative, critical-thinking [critical thinking], and problem-solving [problem solving] tools by staff and other school district stakeholders; and [-]

(8) facilitate [Facilitate] the effective coordination of school district and campus curricular and extracurricular programs.

(i) Learner-Centered Instructional Leadership and Management. A superintendent is an educational leader who promotes the success of all students by advocating, nurturing, and sustaining a school district culture and instructional program conducive to student learning and staff professional growth. A superintendent understands, values, and is able to:

(1) apply ~~[Apply]~~ knowledge and understanding of motivational theories to create conditions that empower staff, students, families, and the community to strive to achieve the school district's vision; [-]

(2) facilitate ~~[Facilitate]~~ the implementation of sound, research-based theories and techniques of classroom management, student discipline, and school safety to ensure a school district environment conducive to learning; [-]

(3) facilitate ~~[Facilitate]~~ the development of a learning organization that supports instructional improvement, builds and implements an appropriate curriculum, and incorporates best practice; [-]

(4) facilitate ~~[Facilitate]~~ the ongoing study of current best practice and relevant research and encourage the application of this knowledge to school district/campus ~~[district/school]~~ improvement initiatives; [-]

(5) plan ~~[Plan]~~ and manage student activity programs to fulfill developmental, social, cultural, athletic, leadership, and scholastic needs (i.e., guidance and counseling programs and services); [-]

(6) institute ~~[Institute]~~ a comprehensive school district program of student assessment, interpretation of data, and reporting of state and national data results; [-]

(7) apply ~~[Apply]~~ knowledge and understanding of special programs to ensure that students with special needs are provided quality, flexible instructional programs and services; [-]

(8) analyze ~~[Analyze]~~ and deploy available instructional resources in the most effective and equitable manner to enhance student learning; [-]

(9) develop ~~[Develop]~~, implement, and evaluate change processes to improve student and adult learning [-] and the climate for learning; and [-]

(10) create ~~[Create]~~ an environment in which all students can learn.

**§242.20. Requirements for the Issuance of the Standard Superintendent Certificate.**

To be eligible to receive the standard Superintendent Certificate, a candidate must:

(1) ~~[(a)]~~ ~~[The individual shall]~~ satisfactorily complete an examination ~~[assessment]~~ based on the standards identified in §242.15 of this title (relating to Standards Required for the Superintendent Certificate); [-]

(2) ~~[(b)]~~ ~~[The individual shall]~~ successfully complete a State Board for Educator Certification-approved ~~[an SBEC-approved]~~ superintendent preparation program and be recommended for certification by that program; [-]

(3) ~~[(c)]~~ ~~[The individual shall]~~ hold, at a minimum, a master's degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board; and [-]

(4) hold, at a minimum, a principal certificate or the equivalent issued under this title or by another state or country.

~~[(d)] The holder of the Superintendent Certificate issued under the provisions of this chapter may serve as a superintendent in a Texas public school district.]~~

**§242.25. Requirements for the First-Time Superintendent in Texas.**

(a) A first-time superintendent ~~[First-time superintendents]~~ (including the first time in the state) shall participate in a one-year mentorship that ~~[which]~~ should include at least 36 clock-hours ~~[eleek hours]~~ of professional development directly related to the standards identified in §242.15 of this title (relating to Standards Required for the Superintendent Certificate).

(b) During the one-year mentorship, the superintendent should have contact with his or her mentor at least once a month. The mentorship program must be completed within the first 18 months of employment as superintendent ~~[in the superintendency]~~ in order to maintain the standard certificate.

(c) Experienced superintendents willing to serve as mentors must participate in training for the role.

**§242.30. Requirements to Renew ~~[for Continuing Education and the Renewal of]~~ the Standard Superintendent Certificate.**

(a) An ~~[Each]~~ individual who holds the standard ~~[Standard]~~ Superintendent Certificate ~~[issued on or after September 1, 1999, and who is employed as a superintendent by a Texas public school district]~~ is subject to ~~[the requirements of]~~ Chapter 232, Subchapter B, ~~[R]~~ of this title (relating to Certificate Renewal and Continuing Professional Education Requirements) ~~[except §232.830(d) of this title (relating to Requirements for Certificate Renewal)].~~

(b) To satisfy the requirements of this section, an individual must complete 200 clock-hours of continuing professional education every five years directly related to the standards in §242.15 of this title (relating to Standards Required for the Superintendent Certificate).

~~[(b)]~~ An individual who holds a valid Texas professional administrator certificate issued prior to September 1, 1999, may voluntarily comply with the requirements of this section under procedures implemented ~~[adopted]~~ by the Texas Education Agency staff ~~[executive director]~~ under §232.810 ~~[, Subchapter R,]~~ of this title (relating to Voluntary Renewal of Current Texas Educators).

~~[(c)]~~ To satisfy the requirements of this section, an individual must complete 200 clock hours of continuing professional education every five years directly related to the standards in §242.15 of this title (relating to Standards Required for the Superintendent Certificate).]

~~[(d)] If an individual employed as a superintendent in a Texas public school does not meet the requirements, the executive director will notify that superintendent's board of trustees.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Jerel Booker

Associate Commissioner, Educator Quality and Standards, Texas Education Agency

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For further information, please call: (512) 475-1497



**19 TAC §242.35**

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Board for Educator Certification or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the State Board for Educator Certification (SBEC) to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; and §21.046(a), which states that the qualifications for superintendent must permit a candidate for certification to substitute management training or experience for part of the educational experience.

The proposed repeal implements the TEC, §§21.003(a), 21.041(b)(2)-(4), and 21.046(a).

*§242.35. Implementation Dates.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 20, 2009.

TRD-200901478

Jerel Booker

Associate Commissioner, Educator Quality and Standards, Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: May 31, 2009

For further information, please call: (512) 475-1497



## CHAPTER 249. DISCIPLINARY PROCEEDINGS, SANCTIONS, AND CONTESTED CASES

### SUBCHAPTER B. ENFORCEMENT ACTIONS AND GUIDELINES

#### 19 TAC §249.14

The State Board for Educator Certification (SBEC) proposes an amendment to §249.14, concerning enforcement actions and guidelines. The section establishes requirements for complaints, required reporting, investigations, investigative notices, and the filing of petitions. The proposed amendment would modify the description of circumstances requiring a superintendent to report alleged misconduct of an educator who resigns from a school district, the minimum requirements of a superintendent's report, and the requirements for a school district to request that the Texas Education Agency (TEA) pursue sanctions against an educator who has abandoned his or her contract in violation of the Texas Education Code (TEC), §§21.105(c)(2), 21.160(c)(2), or 21.210(c)(2).

The TEC, §21.041(b)(7), authorizes the SBEC to adopt rules that provide for disciplinary proceedings for certificate holders.

One of the legislative priorities of the SBEC Legislative Committee for the 81st Texas Legislative Session is to broaden the circumstances under which a report of alleged educator misconduct is required by the TEC, §21.006. Therefore, the SBEC proposes that a provision be added to 19 TAC §249.14(d) that would cover any such additional circumstances under the TEC, §21.006.

A 2006 Third Court of Appeals decision interpreted the meaning of the TEC, §21.355, provision that "a document evaluating the performance of a teacher or administrator is confidential" to include not just formal appraisals but also any document that reflects an administrator's judgment of an educator's actions. Subsequent letter rulings by the Attorney General Open Records Division held that the confidentiality applies even to the SBEC and the TEA staff investigating allegations of educator misconduct. At this time, neither the TEA nor the SBEC has authority to issue an administrative subpoena to obtain withheld documents unless there is other evidence that would support a formal petition for sanctions. As a result, TEA staff investigators have been unable to investigate reports of serious allegations of educator misconduct because school district reports often do not contain detailed factual allegations and do not identify victims or witnesses, while the school districts' records related to alleged misconduct have been withheld as confidential appraisals. Therefore, the SBEC proposes that language be added to 19 TAC §249.14(e), as authorized by the TEC, §21.006(c)(2), to specify that reports of educator misconduct shall contain detailed factual allegations and the identity of victims and witnesses to allow such allegations to be adequately investigated.

Difficulties have arisen in the interpretation of 19 TAC §249.14(f), relating to the requirement that a school district submit to the TEA staff a written complaint for an educator's abandonment of a TEC, Chapter 21 contract "within 30 calendar days after the educator separates from employment." This has been especially problematic when the educator's resignation has not been accepted by the school district, resulting in the necessity of contested case hearings to resolve this single issue. Therefore, the SBEC also proposes that language be modified in 19 TAC §249.14(f) to specify a more definite date from which the 30-calendar day deadline would begin and to specify that the school district finding of lack of good cause to resign is not binding in a contested case hearing.

The proposed amendment would have no new procedural and reporting implications to school districts and educators. Also, the proposed amendment would have no new locally maintained paperwork requirements to school districts and educators.

Jerel Booker, associate commissioner for educator quality and standards, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Mr. Booker has determined that for the first five-year period the proposed amendment is in effect the public benefit anticipated as a result of the proposed amendment would be a more prompt and complete investigation of allegations of educator misconduct, thereby reducing uncertainty and preventing unnecessary administrative proceedings related to complaints of educator contract abandonment, to better protect the safety and welfare of Texas public school students. There are no additional anti-

pated economic costs to persons or entities required to comply with the proposed amendment.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [sbecrules@tea.state.tx.us](mailto:sbecrules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the Department of Educator Quality and Standards, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Jerel Booker, not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the TEC, §21.006(g), which authorizes the SBEC to propose rules as necessary to implement requirements for reporting educator misconduct; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Texas Government Code, Chapter 2001; §21.105(c), which allows the SBEC to impose sanctions against a teacher employed under a probationary contract; §21.160(c), which allows the SBEC to impose sanctions against a teacher employed under a continuing contract; and §21.210(c), which allows the SBEC to impose sanctions against a teacher employed under a term contract.

The proposed amendment implements the TEC, §§21.006(g), 21.041(b)(1) and (7), 21.105(c), 21.160(c), and 21.210(c).

*§249.14. Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition.*

(a) - (c) (No change.)

(d) A person who serves as the superintendent of a school district or the director of an open-enrollment charter school, private school, regional education service center, or shared services arrangement shall promptly notify in writing the SBEC by filing a report with the TEA staff within seven calendar days of the date the person first obtains or has knowledge of information indicating any of the following circumstances:

(1) that an applicant for or a holder of a certificate has a reported criminal history;

(2) that a certificate holder was terminated from employment based on a determination that he or she committed any of the following acts:

(A) sexually or physically abused a student or minor or engaged in any other illegal conduct with a student or minor;

(B) possessed, transferred, sold, or distributed a controlled substance;

(C) illegally transferred, appropriated, or expended school property or funds;

(D) attempted by fraudulent or unauthorized means to obtain or to alter any certificate or permit that would entitle the individual to be employed in a position requiring such certificate or permit or to receive additional compensation associated with a position;

(E) committed a crime, any part of such crime having occurred on school property or at a school-sponsored event; or

(F) solicited or engaged in sexual conduct or a romantic relationship with a student or minor; [or]

(3) that a certificate holder resigned and reasonable evidence supported a recommendation by the person to terminate a certificate holder because he or she committed one of the acts specified in paragraph (2) of this subsection.

(A) Before accepting an employee's resignation that, under this paragraph, requires a person to notify the SBEC by filing a report with the TEA staff, the person shall inform the certificate holder in writing that such a report will be filed and sanctions against his or her certificate may result as a consequence.

(B) A person required to comply with this paragraph [paragraph (3) of this subsection] shall notify the governing body of the employing school district before filing the report with the TEA staff; or[-]

(4) any other circumstances requiring a report under the Texas Education Code (TEC), §21.006.

(e) A report filed under subsection (d) of this section shall, at a minimum, describe in detail [summarize] the factual circumstances requiring the report and identify the subject of the report by providing the following available information: name and any aliases; certificate number, if any, or social security number; [and] last known mailing address and home and daytime phone numbers; name or names and any available contact information of any alleged victim or victims; and name or names and any available contact information of any relevant witnesses to the circumstances requiring the report. A person who is required to file a report under subsection (d) of this section but fails to do so timely is subject to sanctions under this chapter.

(f) The TEA staff shall not pursue sanctions against an educator who is alleged to have abandoned his or her contract in violation of the TEC [Texas Education Code (TEC)], §§21.105(c), 21.160(c), or 21.210(c), unless the board of trustees of the employing school district:

(1) renders a finding that good cause did not exist under the TEC, §§21.105(c)(2), 21.160(c)(2), or 21.210(c)(2). This finding constitutes prima facie evidence of the educator's lack of good cause, but is not a binding determination in a contested case hearing; and

(2) submits a written complaint to the TEA staff within 30 calendar days after the educator files a written resignation with the school district in the manner provided by the TEC, §§21.105, 21.160, or 21.210. This deadline applies even if the school district does not accept the educator's written resignation. If the educator does not submit a written resignation, the employing school district may determine the effective resignation date for purposes of this section, which shall not be later than 14 days after the educator fails to appear for work without district permission under the terms of the contract [separates from employment].

(g) - (m) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 20, 2009.

TRD-200901479  
Jerel Booker  
Associate Commissioner, Educator Quality and Standards, Texas  
Education Agency  
State Board for Educator Certification  
Earliest possible date of adoption: May 31, 2009  
For further information, please call: (512) 475-1497



## **TITLE 22. EXAMINING BOARDS**

### **PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS**

#### **CHAPTER 1. ARCHITECTS**

##### **SUBCHAPTER A. SCOPE; DEFINITIONS**

###### **22 TAC §1.5**

The Texas Board of Architectural Examiners (board) proposes an amendment to §1.5 of Chapter 1, Subchapter A, pertaining to defined terms. The amendment replaces the word "issued" with "prepared" in the definition of the term "Construction Documents." The amendment modifies the term to more accurately reflect a construction document as a document prepared by a design professional, though not necessarily one issued by an architect, to conform to board rules which apply to construction documents that have not been issued by an architect.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal implications for state or local government.

Ms. Hendricks also has determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amended rule are as follows: The amendment will make the definition more accurately reflect the actual practice of design professionals which will provide more meaningful guidance to the public when consulting the board's rules. The amended rule will have no impact on small or micro business.

There will be no change in the cost to persons required to comply with the section. The amendment does not impose any additional regulatory burden upon small or micro businesses or individuals. Therefore, no economic impact statement or flexibility analysis of these amendments is required.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment to this rule is proposed pursuant to §1051.202, Texas Occupations Code Annotated which provides the Texas Board of Architectural Examiners with authority to promulgate rules necessary to enforce laws within the agency's jurisdiction.

The proposed amendment to this rule does not affect any other statutes.

###### *§1.5. Terms Defined Herein.*

The following words, terms, and acronyms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (20) (No change.)

(21) Construction Documents--Drawings; specifications; and addenda, change orders, construction change directives, and other Supplemental Documents prepared [issued by an Architect] for the purpose(s) of Regulatory Approval, permitting, or construction.

(22) - (74) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 16, 2009.

TRD-200901458  
Cathy L. Hendricks  
Executive Director  
Texas Board of Architectural Examiners  
Earliest possible date of adoption: May 31, 2009  
For further information, please call: (512) 305-8544



### **CHAPTER 3. LANDSCAPE ARCHITECTS SUBCHAPTER A. SCOPE; DEFINITIONS**

###### **22 TAC §3.5**

The Texas Board of Architectural Examiners (board) proposes an amendment to §3.5 of Chapter 3, Subchapter A, pertaining to defined terms. The amendment replaces the word "issued" with "prepared" in the definition of the term "Construction Documents." The amendment modifies the term to more accurately reflect a construction document as a document prepared by a design professional, though not necessarily one issued by a landscape architect, to conform to board rules which apply to construction documents that have not been issued by a landscape architect.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal implications to state or local government.

Ms. Hendricks also has determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amended rule are as follows: The amendment will make the definition more accurately reflect the actual practice of design professionals which will provide more meaningful guidance to the public when consulting the board's rules. The amended rule will have no impact on small or micro business.

There will be no change in the cost to persons required to comply with the section. The amendment does not impose any additional regulatory burden upon small or micro businesses or individuals. Therefore, no economic impact statement or flexibility analysis of these amendments is required.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment to this rule is proposed pursuant to §1051.202, Texas Occupations Code Annotated which provides the Texas Board of Architectural Examiners with authority to promulgate rules necessary to enforce laws within the agency's jurisdiction.

The proposed amendment to this rule does not affect any other statutes.

###### *§3.5. Terms Defined Herein.*

The following words, terms, and acronyms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (14) (No change.)

(15) Construction Documents--Drawings; specifications; and addenda, change orders, construction change directives, and other Supplemental Documents prepared [~~issued by a Landscape Architect~~] for the purpose(s) of Regulatory Approval, permitting, or construction.

(16) - (64) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200901459

Cathy L. Hendricks  
Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: May 31, 2009

For further information, please call: (512) 305-8544



## CHAPTER 5. INTERIOR DESIGNERS

### SUBCHAPTER A. SCOPE; DEFINITIONS

#### 22 TAC §5.5

The Texas Board of Architectural Examiners proposes an amendment to §5.5 of Chapter 5, Subchapter A, pertaining to defined terms. The amendment replaces the word "issued" with "prepared" in the definition of the term "Construction Documents." The amendment modifies the term to more accurately reflect a construction document as a document prepared by a design professional, though not necessarily one issued by an interior designer, to conform to board rules which apply to construction documents that have not been issued by an interior designer.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal implications for state or local government.

Ms. Hendricks also has determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amended rule are as follows: The amendment will make the definition more accurately reflect the actual practice of design professionals which will provide more meaningful guidance to the public when consulting the board's rules. The amended rule will have no impact on small or micro business.

There will be no change in the cost to persons required to comply with the section. The amendment does not impose any additional regulatory burden upon small or micro businesses or individuals. Therefore, no economic impact statement or flexibility analysis of these amendments is required.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment to this rule is proposed pursuant to Section 1051.202, Texas Occupations Code Annotated, which provide the Texas Board of Architectural Examiners with authority to pro-

mulgate rules necessary to enforce laws within the agency's jurisdiction.

The proposed amendment to this rule does not affect any other statutes.

#### §5.5. Terms Defined Herein.

The following words, terms, and acronyms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (13) (No change.)

(14) Construction Documents--Drawings; specifications; and addenda, change orders, construction change directives, and other Supplemental Documents prepared [~~issued by an Interior Designer~~] for the purpose(s) of Regulatory Approval, permitting, or construction.

(15) - (60) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 16, 2009.

TRD-200901460

Cathy L. Hendricks  
Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: May 31, 2009

For further information, please call: (512) 305-8544



## PART 9. TEXAS MEDICAL BOARD

### CHAPTER 162. SUPERVISION OF MEDICAL SCHOOL STUDENTS

#### 22 TAC §162.1

The Texas Medical Board (Board) proposes amendments to Chapter 162, §162.1, concerning Supervision of Medical School Students.

The amendment clarifies the intent of the amendment previously adopted, which became effective on March 9, 2009.

Robert D. Simpson, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the proposal will be to clarify existing language.

Mr. Simpson has also determined that for the first five-year period the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of



medicine in this state; enforce this subtitle; and establish rules related to licensure.

No other statutes, articles or codes are affected by this proposal.

*§162.1. Supervision of Medical Students.*

(a) In order to supervise a medical student who is enrolled at a Texas medical school as a full-time student or visiting student the[~~;~~]

~~[(1)]~~ [a] physician must have an active and unrestricted Texas license,~~[-] and the medical student must meet the following criteria:~~

~~[(A)~~ is enrolled at a Texas medical school; or]

~~[(B)~~ is a student at a medical school located outside Texas and is enrolled as a visiting student at a Texas medical school; or]

~~[(2)~~ a physician must:]

(b) In order to supervise a medical student who does not meet the criteria in subsection (a) of this section the physician must:

(1) ~~[(A)]~~ have an active and unrestricted Texas license; ~~[and]~~

(2) ~~[(B)]~~ hold a faculty position in the graduate medical education program in the same specialty in which the student will receive undergraduate medical education; ~~[and]~~

(3) ~~[(C)]~~ supervise the student during the educational period; and

(4) ~~[(D)]~~ supervise the student's ~~[the medical student must receive supervised]~~ medical education in either a Texas hospital or teaching institution, which sponsors or participates in a program of graduate medical education accredited by the Accrediting Council for Graduate Medical Education, the American Osteopathic Association, or the Texas Medical Board in the same subject as the medical or osteopathic medical education in which the hospital or teaching institution has an agreement with the applicant's school.

(c) ~~[(b)]~~ If the physician is not licensed in Texas as required in subsection (a) or (b) of this section, the physician must be employed by the federal government and maintain an active and unrestricted license.

(d) ~~[(e)]~~ Physician applicants who receive medical education in the United States in settings that do not comply with statutory requirements set forth in Texas Occupations Code §155.003(b) - (c) may be ineligible for licensure.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 16, 2009.

TRD-200901449

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

Earliest possible date of adoption: May 31, 2009

For further information, please call: (512) 305-7016



## CHAPTER 165. MEDICAL RECORDS

### 22 TAC §165.3

The Texas Medical Board (Board) proposes amendments to Chapter 165, §165.3, concerning Patient Access to Diagnostic Imaging Studies in Physician's Office.

The amendment expands the rule to include non-static diagnostic imaging studies and imaging studies that are maintained in electronic format.

Robert D. Simpson, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the proposal will be to allow patients to obtain non-static as well as static imaging studies at a set fee from their physicians.

Mr. Simpson has also determined that for the first five-year period the section is in effect there will be no fiscal implications to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §159.008, Texas Occupations Code.

No other statutes, articles or codes are affected by this proposal.

*§165.3. Patient Access to Diagnostic Imaging Studies in Physician's Office.*

(a) Purpose. This section is promulgated to ensure that patients have reasonable access to ~~[films and other static]~~ diagnostic imaging studies maintained in the physician's office and that the practice of medicine by individual licensees and the delivery of health care to the public shall not be unduly hindered or interrupted by allowing for such access. As used in this section, "diagnostic imaging studies" or "imaging studies" includes static and non-static films and imaging studies in electronic format.

(b) Request and release.

(1) Upon receiving a written request and release of information that complies with ~~[as provided for in the Medical Practice Act,] §159.005 of the Act, [as required for the release of medical records,]~~ a physician in possession or control of ~~[films or other static]~~ diagnostic imaging studies of a patient shall allow access to the ~~[films or other diagnostic]~~ imaging studies through one or more of the following means:

(A) providing copies of the ~~[films or other static diagnostic]~~ imaging studies to the patient or recipient as designated in the request; or~~[-]~~

(B) releasing the original ~~[films or other static diagnostic]~~ imaging studies to the patient or recipient as designated in the request.

(2) Release and transfer of original ~~[films or other static diagnostic]~~ imaging studies may be evidenced by a signed and dated receipt from a patient or recipient of the original ~~[films or other diagnostic]~~

tie] imaging studies, or from their authorized representative, acknowledging receipt of and responsibility for the original imaging studies.

(c) Exceptions. As provided for under ~~[the Medical Practice Act,]~~ §159.005 of the Act, a physician is not required to release ~~[films or other static diagnostic]~~ imaging studies directly to a patient if the physician determines that access to the ~~[films or static diagnostic]~~ imaging studies would be harmful to the physical, mental, or emotional health of the patient. If a physician makes a determination that access would be harmful to the physical, mental, or emotional health of the patient, the physician shall, within the time allowed after receipt of a proper request, provide access to the requested ~~[films or static diagnostic]~~ imaging studies to an authorized representative of the patient as provided for in subsection (b) of this section.

(d) Time for release and denial. The requested copies or access to ~~[films or other static diagnostic]~~ imaging studies shall be provided by the physician within 15 business days after the date of receipt of the request. If the physician denies the request, in whole or in part, the physician shall furnish the patient or recipient a written statement, signed and dated, within 15 business days of receipt of the request stating the reason for the denial and how the patient or recipient can file a complaint with federal Department of Health and Human Services and the Texas Medical ~~[State]~~ Board ~~[of Medical Examiners]~~. A copy of the statement denying the request shall be placed in the patient's medical records.

(e) Fees. The physician responding to a request by providing ~~[for]~~ copies of ~~[films or other static diagnostic]~~ imaging studies shall be entitled to a reasonable fee for providing the copies. A reasonable fee shall be no more than \$8 per copy of an imaging study. In addition, a reasonable fee may include actual costs for mailing, shipping, or delivery.

(f) Emergency Request. The physician providing copies of requested ~~[films or other static diagnostic]~~ imaging studies shall be entitled to a reasonable fee prior to release of the copies unless the copies are requested by a licensed Texas health care provider or a physician licensed by any state, territory, or insular possession of the United States or any state or province of Canada if requested for purposes of emergency or acute medical care.

(g) Non-emergent Requests. In the event that the physician receives a proper request for access to ~~[copies of films or other static diagnostic]~~ imaging studies for purposes other than for emergency or acute medical care, the physician may retain copies of the requested information until payment is received. If payment is not routed with such a request, within ten calendar days from receiving the ~~[a]~~ request ~~[for copies of films or other static diagnostic imaging studies]~~, the physician shall notify the requesting party in writing of the need for payment and may withhold the copies until payment of a reasonable fee is received. A copy of the letter regarding the need for payment shall be made part of the patient's medical record.

(h) Improper Withholding for Past Due Accounts. Access to or copies of ~~[films or other static diagnostic]~~ imaging studies requested pursuant to a proper request for release may not be withheld from the patient, the patient's authorized agent, or the patient's designated recipient for such copies based on a past due account for medical care or treatment previously rendered to the patient.

(i) Subpoena. A subpoena shall not be required for access to or the release of originals or copies of ~~[static diagnostic]~~ imaging studies requested pursuant to the provisions of this section.

(j) Maximum charges. The allowable charges set forth in this section shall be maximum amounts, and this section shall be construed

and applied so as to be consistent with lower fees or the prohibition or absence of such fees as required by prevailing state or federal law.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200901450

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

Earliest possible date of adoption: May 31, 2009

For further information, please call: (512) 305-7016



## CHAPTER 173. PHYSICIAN PROFILES

### 22 TAC §173.1

The Texas Medical Board (Board) proposes amendments to Chapter 173, §173.1, concerning to Profile Contents.

The amendment requires that the profile of each licensed physician shall contain the physician's full name as the physician is licensed.

Robert D. Simpson, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the proposal will be to provide the public with accurate information on individuals licensed by the Board.

Mr. Simpson has also determined that for the first five-year period this section is in effect there will be no fiscal implications to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: [rules.development@tmb.state.tx.us](mailto:rules.development@tmb.state.tx.us). A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

Section 154.006, Texas Occupations Code, is affected by this proposal.

#### §173.1. Profile Contents.

(a) The Texas Medical Board (the "board") shall develop and make available to the public a comprehensive profile of each licensed physician electronically via the Internet or in paper format upon request.

(b) The profile of each licensed physician shall contain the following information listed in paragraphs (1) - (27) of this subsection:

(1) full name as the physician is licensed ~~[requests that it be published]~~;

(2) - (27) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200901451

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

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For further information, please call: (512) 305-7016



## CHAPTER 174. TELEMEDICINE

### 22 TAC §§174.1, 174.2, 174.4, 174.6

The Texas Medical Board (Board) proposes amendments to Chapter 174, §§174.1, 174.2, 174.4, and 174.6, concerning Telemedicine.

The amendment to §174.1, relating to Purpose, adds a citation to the statute authorizing the Board to adopt rules regarding telemedicine and clarifies that these rules do not apply to a limited purpose telemedicine license. The amendment to §174.2, relating to Definitions, revises definitions to distant site physician, patient site location, and telemedicine medical service to conform to recent changes to definitions by the Texas Health and Human Services Commission (HHSC). The amendment to §174.4, relating to Use of the Internet in Medical Practice, provides that an out-of-state physician may provide only episodic consultations to patients in Texas without a Texas medical license, as provided in §172.12(f). The amendment to §174.6, relating to Delegation to and Supervision of Patient Site Presenters, provides that distant site physicians must adequately supervise patient site presenters and have the presenters with the patients when a telemedicine medical service is provided.

Elsewhere in this issue of the *Texas Register*, the Board contemporaneously proposes the rule review of Chapter 174.

Robert D. Simpson, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the proposal will be to improve access to and quality of health care services.

Mr. Simpson has also determined that for the first five-year period the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. However, these rules do conform to recent rule adoptions by the Texas Health and Human Services Commission (HHSC) to 1 TAC §354.1430, relating to Definitions, and §354.1432, relating to Benefits and Limitations, which did have a fiscal impact to state government. There will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice

of medicine in this state; enforce this subtitle; and establish rules related to licensure.

Section 151.056, Texas Occupations Code is affected by this proposal.

#### §174.1. Purpose.

Pursuant to §153.004 of the Medical Practice Act, the Board is authorized to adopt rules relating to Telemedicine Services. This chapter is promulgated to establish standards for the use of the Internet and the provision of telemedicine medical services to Medicaid and Medicare recipients by physicians who are licensed to practice medicine in this state [State]. This chapter does not apply to special purpose telemedicine licenses issued by the Board pursuant to §151.056 of the Act and §172.12 of this title (relating to Telemedicine License).

#### §174.2. Definitions.

The following words and terms, when used in this chapter shall have the following meanings unless the context indicates otherwise.

(1) Distant site physician--A physician that uses telemedicine to provide health care services to a patient in Texas. The physician must be licensed to practice medicine in Texas.

(2) [(+)] Medical practice site--A patient-specific Internet site, access to which is limited to licensed physicians, associated medical personnel and patients. It is an interactive site and thus qualifies as a practice location. It requires a defined physician-patient relationship.

(3) [(2)] Medium--Any mechanism of information transfer including electronic means.

(4) Patient site location--The patient site location is where the client is physically located. It is limited to the following locations:

(A) State hospital;

(B) State school;

(C) One of the following locations in a rural or underserved area:

(i) physician office;

(ii) hospital;

(iii) rural health clinic (RHC);

(iv) federally qualified health center;

(v) intermediate care facility for persons with mental retardation (ICF/MR) that is not a state school;

(vi) community center as defined in Health and Safety Code §534.001 or outreach site associated with a community center; or

(vii) local health department established under Health and Safety Code §121.031, or public health district established under Health and Safety Code §121.041.

(5) Patient site presenter--The patient site presenter is the individual at the patient site location who introduces the patient to the distant site physician for examination and to whom the distant site physician may delegate tasks and activities. A patient site presenter must be:

(A) licensed or certified in this state to perform health care services and must present and/or be delegated tasks and activities only within the scope of the individual's licensure or certification; and/or

(B) a qualified mental health professional-community services (QMHP-CS) as defined in 25 TAC §412.303(31) (relating to Definitions)

(6) ~~[(3)]~~ Person--An individual unless otherwise expressly made applicable to a partnership, association, or corporation.

(7) ~~[(4)]~~ Physician-patient e-mail--A computer-based communication between physician (or their medical personnel) and patients within a professional relationship in which the physician has taken on an explicit measure of responsibility for the patient's care.

(8) ~~[(5)]~~ Telemedicine medical service--The practice of health care delivery, by a distant site physician licensed by the Texas Medical Board who is physically located at a Texas site other than the site where the patient is located, for the purposes of evaluation, diagnosis, consultation, or treatment that requires the use of advanced telecommunications technology. Telephone conversations, chart reviews, electronic mail messages, and facsimile transmissions are not considered telemedicine. [A health care service initiated by a physician or provided by a health professional acting under physician delegation and supervision; for purposes of assessment by a health professional; diagnosis or consultation by a physician; treatment, or the transfer of medical data; that requires the use of advanced telecommunications other than by telephone or facsimile as described in §57.042 of the Utilities Code.]

~~[(6)]~~ Telepresenter--a remote site provider, as defined in 1 TAC §354.1430, who is not a physician, registered nurse, advanced practice nurse or physician assistant, unless such physician, registered nurse, advanced practice nurse or physician assistant is a qualified mental health professional as defined in §531.02175(a) of the Government Code.]

§174.4. *Use of the Internet in Medical Practice.*

(a) - (b) (No change.)

(c) State Licensure. Physicians who treat and prescribe through the Internet are practicing medicine and must possess appropriate licensure in all jurisdictions where patients reside. An out-of-state physician may provide episodic consultations without a Texas medical license, as provided in §172.12(f) of this title (relating to Telemedicine License - Exemptions).

(d) - (f) (No change.)

(g) Accountability. Medical practice sites must provide patients with a clear mechanism to:

(1) access, supplement, and amend patient-provided personal health information;

(2) provide feedback regarding the site and the quality of information and services; and

(3) register complaints, including information regarding filing a complaint with the Texas Medical Board, ~~[State Board of Medical Examiners]~~ as provided for in Chapter 178 of this title (relating to Complaints).

(h) (No change.)

§174.6. *Delegation to and Supervision of Patient Site Presenters [Telepresenters].*

(a) A distant site physician may delegate tasks and activities to a patient site presenter ~~[telepresenter who is qualified by licensing, training or experience for the performance of the task or activity as long as the task or activity does not require the exercise of independent medical judgment for its performance];~~

(b) A distant site physician delegating tasks or activities to a patient site presenter ~~[telepresenter]~~ shall ensure that the patient site presenter ~~[telepresenter]~~ to whom delegation is made is adequately supervised ~~[qualified by licensure, training, or experience to perform the task or activity delegated];~~

(c) A patient site presenter must be at the patient site location when the telemedicine medical service is provided ~~[physician delegating tasks or activities to a telepresenter shall ensure that the telepresenter to whom delegation is made is adequately supervised].~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 16, 2009.

TRD-200901452

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

Earliest possible date of adoption: May 31, 2009

For further information, please call: (512) 305-7016

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# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## **TITLE 34. PUBLIC FINANCE**

### **PART 1. COMPTROLLER OF PUBLIC ACCOUNTS**

#### **CHAPTER 3. TAX ADMINISTRATION**

##### **SUBCHAPTER V. FRANCHISE TAX**

###### **34 TAC §3.582**

The Comptroller of Public Accounts withdraws the proposed amendment to §3.582 which appeared in the November 7, 2008, issue of the *Texas Register* (33 TexReg 9053).

Filed with the Office of the Secretary of State on April 16, 2009.

TRD-200901446

Martin Cherry

General Counsel

Comptroller of Public Accounts

Effective date: April 16, 2009

For further information, please call: (512) 475-0387



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

### PART 4. OFFICE OF THE SECRETARY OF STATE

#### CHAPTER 95. UNIFORM COMMERCIAL CODE

##### SUBCHAPTER H. OTHER NOTICES OF LIENS 1 TAC §95.602

The Office of the Secretary of State adopts amendments to 1 TAC §95.602, concerning Other Notices of Liens. The amendments are adopted without changes to the text as proposed in the March 13, 2009, issue of the *Texas Register* (34 TexReg 1771).

The purpose of the amendments is to more accurately reflect current filing policies and procedures due to statutory requirements.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Business and Commerce Code, §§9.501 - 9.527; Texas Business and Commerce Code, Chapter 261; Texas Property Code, §§14.001 - 14.007; Texas Property Code, §§70.3031 - 70.307; Texas Property Code, §§70.401 - 70.410; Texas Agriculture Code, Chapter 128; Texas Agriculture Code, Chapter 188; Texas Code of Criminal Procedure, §42.22; and Texas Government Code, §§51.901 - 51.905, which provide the Secretary of State with the authority to adopt rules necessary to administer Texas Business and Commerce Code, Chapter 9, Subchapter D; Texas Business and Commerce Code, Chapter 261; Uniform Federal Lien Registration Act, Chapter 14; Texas Property Code, Chapter 70, Subchapters D and E; Texas Agriculture Code, Title 5, Subtitle H and Title 6, Subtitle E; and Texas Government Code, Chapter 51, Subchapter J.

No other statutes, articles or codes are affected by this proposal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 17, 2009.

TRD-200901467

Lorna Wassdorf

Director, Business and Public Filings Division

Office of the Secretary of State

Effective date: May 7, 2009

Proposal publication date: March 13, 2009

For further information, please call: (512) 475-2710

## TITLE 22. EXAMINING BOARDS

### PART 9. TEXAS MEDICAL BOARD

#### CHAPTER 166. PHYSICIAN REGISTRATION 22 TAC §166.2

The Texas Medical Board (Board) adopts amendments to Chapter 166, §166.2, concerning Continuing Medical Education, without changes to the proposed text as published in the February 27, 2009, issue of the *Texas Register* (34 TexReg 1369) and will not be republished.

The amendment will allow members of the Board's Expert Physician Panel to obtain up to 6 hours of formal Continuing Medical Education each year for time actually spent in reviewing standard of care cases and providing a report to the Board. It is appropriate to award up to 6 hours of CME credits for the review of standard of care cases at the Board and the work provided to the Board warrants such credit.

The Board received no public written comments and no one appeared to testify at the public hearing held on April 3, 2009, regarding the amendment to §166.2.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §156.051, which provide authority for the Board to adopt rules and bylaws as necessary to govern its own proceedings, perform its duties, regulate the practice of medicine in this state, enforce this subtitle, and establish rules related to licensure and to adopt a program for the continuing medical education of license holders.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 16, 2009.

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Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

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For further information, please call: (512) 305-7016

## CHAPTER 183. ACUPUNCTURE

### 22 TAC §§183.2, 183.4, 183.10, 183.20

The Texas Medical Board (Board) adopts amendments to Chapter 183, Acupuncture, §183.2, concerning Definitions, §183.10, concerning Patient Records, and §183.20, concerning Continuing Acupuncture Education, without changes to the proposed text as published in the February 27, 2009, issue of the *Texas Register* (34 TexReg 1370) and will not be republished. The Board also adopts an amendment to §183.4, concerning Licensure, with minor grammatical changes to the proposed text as published in the February 27, 2009, issue of the *Texas Register* (34 TexReg 1370). The text of the rule will be republished.

The Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rules at a meeting held on January 15, 2009. The comments were incorporated into the proposed rules.

Elsewhere in this issue of the *Texas Register*, the Board contemporaneously adopts the rule review of Chapter 183.

The amendments to §183.2, relating to Definitions, recognize acupuncture schools in the United States or Canada that have been approved by an accrediting body recognized by the Texas Higher Education Coordinating Board and delete obsolete references to examinations taken prior to January 1, 2007.

The Board has determined that acupuncture schools in the United States and Canada that have been approved by an accrediting body recognized by the Texas Higher Education Coordinating Board should be recognized by the Board of Acupuncture Examiners for purposes of licensure.

The amendments to §183.4, relating to Licensure, clarifies a possible confusion created by the current language of the rule, which incorrectly indicates that an unapproved acupuncture school in the United States or Canada can be recognized for licensure; increases the limit on times allowed for passage of the examination required for licensure from 3 times to 5 times; deletes the requirement that the JP examination be passed within three attempts and provides that passage of the JP examination is not required more than once; clarifies that an application is expired, rather than inactive, after one year; provides that applicants of acupuncture schools in the United States or Canada are not required to have a personal interview at board offices; updates procedures for submitting fingerprints for licensure applications; clarifies the requirement to file an application for relicensure when a license has been expired for more than one year; and makes grammatical corrections. The amendment to §183.4 is adopted with a minor grammatical change in subsection (a)(7)(E). At the end of subparagraph (E), the "; and" is being removed, as it is no longer necessary.

The Board has determined that confusion regarding the interpretation of this rule should be settled by making it clear that an acupuncture school in the United States or Canada must be approved; it is appropriate to allow an applicant 5 attempts to pass the examination required for licensure; passage of the JP Examination should only be require one time; an application for licensure should expire after one year; applicants who have attended acupuncture school in the United States or Canada should not be required to have a personal interview at board offices; the procedures for submitting fingerprints for licensure applications should be updated; and an application for relicensure should be required when a license has been expired for more than one year.

The amendments to §183.10, relating to Patient Records, specify vital signs that must be taken in a proper examination and reduce time for records to be maintained from indefinitely to 5

years, specifying situations in which they must be maintained longer.

The Board has determined that it is reasonable to require that acupuncturists maintain patient records for 5 years, or longer in certain situations. A proper initial examination should include taking vital signs.

The amendments to §183.20, relating to Continuing Acupuncture Education, delete a provision stating that credit for an ethics course completed for purposes of maintenance of licensure for another health profession may satisfy the requirement for continuing acupuncture education in ethics; require one hour of continuing acupuncture education in biomedicine after November 30, 2010; update references to other board rules; specify that three years of previous experience must be continuous to achieve approved provider status; and delete unnecessary words.

The Board has determined that ethics courses completed for purposes of maintenance of licensure for another health profession may not address acupuncture and should not be recognized for credit for continuing acupuncture education. One hour of continuing acupuncture education in Biomedicine should be required after November 30, 2010. Three continuous years of previous experience should be required for a CAE provider to achieve approved provider status.

The Board received no public written comments and no one appeared to testify at the public hearing held on April 3, 2009, regarding adoption of §§183.2, 183.4, 183.10 and 183.20.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 which provide authority for the Board to adopt rules and bylaws as necessary to govern its own proceedings, perform its duties, regulate the practice of medicine in this state, enforce this subtitle, and establish rules related to licensure. The amendments are also adopted under the authority of §205.101, Texas Occupations Code Annotated, which provide authority for the Texas State Board of Acupuncture Examiners to adopt rules subject to approval of the Texas Medical Board.

#### §183.4. Licensure.

(a) Qualifications. An applicant must present satisfactory proof to the acupuncture board that the applicant:

- (1) is at least 21 years of age;
- (2) is of good professional character as defined in §183.2 of this title (relating to Definitions);
- (3) has successfully completed 60 semester hours of general academic college level courses, other than in acupuncture school, that are not remedial and would be acceptable at the time they were completed for credit on an academic degree at a two or four year institution of higher education within the United States accredited by an agency recognized by the Higher Education Coordinating Board or its equivalent in other states as a regional accrediting body. Coursework completed as a part of a degree program in acupuncture or Oriental medicine may be accepted by the acupuncture board if, in the opinion of the acupuncture board, such coursework is substantially equivalent to the required hours of general academic college level coursework;
- (4) is a graduate of an acceptable approved acupuncture school;
- (5) has taken and passed, within five attempts, each component of the full National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) examination. If an applicant submits to multiple attempts on a component before and on or after June 1,

2004, the number of attempts shall be combined based on the subject matter tested;

(6) has taken and passed the CCAOM (Council of Colleges of Acupuncture and Oriental Medicine) Clean Needle Technique (CNT) course and practical examination;

(7) for applicants who apply for a license on or after September 1, 2007, passes a jurisprudence examination ("JP exam"), which shall be conducted on the licensing requirements and other laws, rules, or regulations applicable to the acupuncture profession in this state. The jurisprudence examination shall be developed and administered as follows:

(A) Questions for the JP Exam shall be prepared by agency staff with input from the Acupuncture board and the agency staff shall make arrangements for a facility by which applicants can take the examination.

(B) Applicants must pass the JP exam with a score of 75 or better within three attempts.

(C) An examinee shall not be permitted to bring medical books, compends, notes, medical journals, calculators or other help into the examination room, nor be allowed to communicate by word or sign with another examinee while the examination is in progress without permission of the presiding examiner, nor be allowed to leave the examination room except when so permitted by the presiding examiner.

(D) Irregularities during an examination such as giving or obtaining unauthorized information or aid as evidenced by observation or subsequent statistical analysis of answer sheets, shall be sufficient cause to terminate an applicant's participation in an examination, invalidate the applicant's examination results, or take other appropriate action.

(E) A person who has passed the JP Exam shall not be required to retake the Exam for another or similar license, except as a specific requirement of the board.

(8) is able to communicate in English as demonstrated by one of the following:

(A) passage of the NCCAOM examination taken in English;

(B) passage of the TOEFL (Test of English as a Foreign Language) with a score of 550 or higher on the paper based test or with a score of 213 or higher on the computer based test;

(C) passage of the TSE (Test of Spoken English) with a score of 45 or higher;

(D) passage of the TOEIC (Test of English for International Communication) with a score of 500 or higher;

(E) graduation from an acceptable approved school of acupuncture located in the United States or Canada; or

(F) at the discretion of the acupuncture board, passage of any other similar, validated exam testing English competency given by a testing service with results reported directly to the acupuncture board or with results otherwise subject to verification by direct contact between the testing service and the acupuncture board.

(b) Procedural rules for licensure applicants. The following provisions shall apply to all licensure applicants.

(1) Applicants for licensure:

(A) whose documentation indicates any name other than the name under which the applicant has applied must furnish proof of the name change;

(B) whose application for licensure which has been filed with the board office and which is in excess of one year old from the date of receipt shall be considered expired. Any fee previously submitted with that application shall be forfeited. Any further application procedure for licensure will require submission of a new application and inclusion of the current licensure fee;

(C) who in any way falsify the application may be required to appear before the acupuncture board. It will be at the discretion of the acupuncture board whether or not the applicant will be issued a Texas acupuncture license;

(D) on whom adverse information is received by the acupuncture board may be required to appear before the acupuncture board. It will be at the discretion of the acupuncture board whether or not the applicant will be issued a Texas license;

(E) shall be required to comply with the acupuncture board's rules and regulations which are in effect at the time the completed application form and fee are filed with the board;

(F) may be required to sit for additional oral, written, or practical examinations or demonstrations that, in the opinion of the acupuncture board, are necessary to determine competency of the applicant;

(G) must have the application for licensure completed and legible in every detail 60 days prior to the acupuncture board meeting in which they are to be considered for licensure unless otherwise determined by the acupuncture board based on good cause.

(2) Applicants for licensure who wish to request reasonable accommodation due to a disability must submit the request at the time of filing the application.

(3) Applicants who have been licensed in any other state, province, or country shall complete a notarized oath or other verified sworn statement in regard to the following:

(A) whether the license, certificate, or authority has been the subject of proceedings against the applicant for the restriction for cause, cancellation for cause, suspension for cause, or revocation of the license, certificate, or authority to practice in the state, province, or country, and if so, the status of such proceedings and any resulting action; and

(B) whether an investigation in regard to the applicant is pending in any jurisdiction or a prosecution is pending against the applicant in any state, federal, national, local, or provincial court for any offense that under the laws of the state of Texas is a felony, and if so, the status of such prosecution or investigation.

(4) An applicant for a license to practice acupuncture may not be required to appear before the acupuncture board or any of its committees unless the application raises questions about the applicant's:

(A) physical or mental impairment;

(B) criminal conviction; or

(C) revocation of a professional license.

(c) Licensure documentation.

(1) Original documents/interview. Upon request, any applicant must appear for a personal interview at the board offices and present original documents to a representative of the board for inspec-



tion. Original documents may include, but are not limited to, those listed in paragraph (2) of this subsection.

(2) Required documentation. Documentation required of all applicants for licensure shall include the following:

(A) Birth certificate/proof of age. Each applicant for licensure must provide a copy of either a birth certificate and translation, if necessary, to prove that the applicant is at least 21 years of age. In instances where a birth certificate is not available, the applicant must provide copies of a passport or other suitable alternate documentation.

(B) Name change. Any applicant who submits documentation showing a name other than the name under which the applicant has applied must present copies of marriage licenses, divorce decrees, or court orders stating the name change. In cases where the applicant's name has been changed by naturalization the applicant must submit the original naturalization certificate by hand delivery or by certified mail to the board office for inspection.

(C) Examination scores. Each applicant for licensure must have a certified transcript of grades submitted directly from the appropriate testing service to the acupuncture board for all examinations used in Texas for purposes of licensure in Texas.

(D) Dean's certification. Each applicant for licensure must have a certificate of graduation submitted directly from the school of acupuncture on a form provided by the acupuncture board. The applicant shall attach to the form a recent photograph, meeting United States Government passport standards, before submitting it to the school of acupuncture. The school shall have the Dean or the designated appointee sign the form attesting to the information on the form and placing the school seal over the photograph.

(E) Diploma or certificate. All applicants for licensure must submit a copy of their diploma or certificate of graduation.

(F) Evaluations. All applicants must provide, on a form furnished by the acupuncture board, evaluations of their professional affiliations for the past ten years or since graduation from acupuncture school, whichever is the shorter period.

(G) Preacupuncture school transcript. Each applicant must have the appropriate school or schools submit a copy of the record of their undergraduate education directly to the acupuncture board. Transcripts must show courses taken and grades obtained. If determined that the documentation submitted by the applicant is not sufficient to show proof of the completion of 60 semester hours of college courses other than in acupuncture school, the applicant must obtain coursework verification by submitting documentation to the acupuncture board for a determination as to the adequacy of such education or to a two or four year institution of higher education within the United States. The institution must be preapproved by the board's executive director and accredited by an agency recognized as a regional accrediting body by the Texas Higher Education Coordinating Board or its equivalent in another state.

(H) School of acupuncture transcript. Each applicant must have his or her acupuncture school submit a transcript of courses taken and grades obtained directly to the acupuncture board. Transcripts must clearly demonstrate completion of 1,800 instructional hours, with at least 450 hours of herbal studies.

(I) Fingerprint card. Each applicant must submit his or her fingerprints according to the procedure prescribed by the board.

(J) Other verification. For good cause shown, with the approval of the acupuncture board, verification of any information required by this subsection may be made by a means not otherwise provided for in this subsection.

(3) Additional documentation. Applicants may be required to submit other documentation, including but not limited to the following:

(A) Translations. An accurate certified translation of any document that is in a language other than the English language along with the original document or a certified copy of the original document which has been translated.

(B) Arrest Records. If an applicant has ever been arrested, a copy of the arrest and arrest disposition from the arresting authority and submitted by that authority directly to the acupuncture board.

(C) Malpractice. If an applicant has ever been named in a malpractice claim filed with any liability carrier or if an applicant has ever been named in a malpractice suit, the applicant shall submit the following:

(i) a completed liability carrier form furnished by the acupuncture board regarding each claim filed against the applicant's insurance;

(ii) for each claim that becomes a malpractice suit, a letter from the attorney representing the applicant directly to this board explaining the allegation, dates of the allegation, and current status of the suit. If the suit has been closed, the attorney must state the disposition of the suit, and if any money was paid, the amount of the settlement, unless release of such information is prohibited by law or an order of a court with competent jurisdiction. If such letter is not available, the applicant will be required to furnish a notarized affidavit explaining why this letter cannot be provided; and

(iii) a statement, composed by the applicant, explaining the circumstances pertaining to patient care in defense of the allegations.

(D) Inpatient treatment for alcohol/substance abuse or mental illness. Each applicant that has been admitted to an inpatient facility within the last five years for the treatment of alcohol/substance abuse or mental illness must submit the following:

(i) an applicant's statement explaining the circumstances of the hospitalization;

(ii) an admitting summary and discharge summary, submitted directly from the inpatient facility;

(iii) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(iv) a copy of any contracts or agreements signed with any licensing authority.

(E) Outpatient treatment for alcohol/substance abuse or mental illness. Each applicant that has been treated on an outpatient basis within the last five years for alcohol/substance abuse or mental illness must submit the following:

(i) an applicant's statement explaining the circumstances of the outpatient treatment;

(ii) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(iii) a copy of any contracts or agreements signed with any licensing authority.

(F) Additional documentation. Additional documentation as is deemed necessary to facilitate the investigation of any application for licensure.

(G) DD214. A copy of the DD214 indicating separation from any branch of the United States military.

(H) Other verification. For good cause shown, with the approval of the acupuncture board, verification of any information required by this subsection may be made by a means not otherwise provided for in this subsection.

(I) False documentation. Falsification of any affidavit or submission of false information to obtain a license may subject an acupuncturist to denial of a license or to discipline pursuant to the Act, §205.351.

(4) Substitute documents/proof. The acupuncture board may, at its discretion, allow substitute documents where proof of exhaustive efforts on the applicant's part to secure the required documents is presented. These exceptions are reviewed by the acupuncture board, a board committee, or the board's executive director on an individual case-by-case basis.

(d) Temporary license.

(1) Issuance. The acupuncture board may, through the executive director of the agency, issue a temporary license to a licensure applicant who appears to meet all the qualifications for an acupuncture license under the Act, but is waiting for the next scheduled meeting of the acupuncture board for review and for the license to be issued.

(2) Duration/renewal. A temporary license shall be valid for 100 days from the date issued and may be extended only for another 30 days after the date the initial temporary license expires. Issuance of a temporary license may be subject to restrictions at the discretion of the executive director and shall not be deemed dispositive in regard to the decision by the acupuncture board to grant or deny an application for a permanent license.

(e) Distinguished professor temporary license.

(1) Issuance. The acupuncture board may issue a distinguished professor temporary license to an acupuncturist who:

(A) holds a substantially equivalent license, certificate, or authority to practice acupuncture in another state, province, or country;

(B) agrees to and limits any acupuncture practice in this state to acupuncture practice for demonstration or teaching purposes for acupuncture students and/or instructors, and in direct affiliation with an acupuncture school that is a candidate for accreditation or has accreditation through the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) at which the students are trained and/or the instructors teach;

(C) agrees to and limits practice to demonstrations or instruction under the direct supervision of a licensed Texas acupuncturist who holds an unrestricted license to practice acupuncture in this state;

(D) pays any required fees for issuance or renewal of the distinguished professor temporary license; and

(E) passes the JP Exam, as provided in subsection (a)(7) of this section.

(2) Duration. The distinguished professor temporary license shall be valid for a continuous one-year period; however, the permit is revocable at any time the board deems necessary. The distinguished professor temporary license shall automatically expire one

year after the date of issuance. The distinguished professor temporary license may not be renewed or reissued.

(3) Disciplinary action. A distinguished professor temporary license or renewal may be denied, terminated, canceled, suspended, or revoked for any violation of acupuncture board rules or the Act, Subchapter H.

(f) Relicensure. If an acupuncturist's license has been expired for one year, it is considered to have been canceled, and the acupuncturist may not renew the license. The acupuncturist may submit an application for relicensure and must comply with the requirements and procedures for obtaining an original license.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 16, 2009.

TRD-200901454

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

Effective date: May 6, 2009

Proposal publication date: February 27, 2009

For further information, please call: (512) 305-7016



## CHAPTER 189. COMPLIANCE PROGRAM

### 22 TAC §189.4

The Texas Medical Board (Board) adopts an amendment to Chapter 189, §189.4, concerning Limitations on Physician Probationer's Practice, with changes to the proposed text as published in the January 9, 2009, issue of the *Texas Register* (34 TexReg 170). The text of the rule will be republished.

The Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rule at a meeting held on October 29, 2008. The comments were incorporated into the proposed rule.

On December 11, 2008 the Board authorized the publication for public comment of proposed revision to §189.4, relating to Limitations on Physician Probationer's Practice (the "proposed rule"). The proposed rule was published in the January 9, 2009, issue of the *Texas Register*, beginning at 34 TexReg 170. A public hearing was held to consider public comments on the proposed rule on February 6, 2009.

The proposed revision would have added a provision recognizing Board Rule §185.2(19), which provides that a physician with a restricted license may not supervise or delegate prescriptive authority to a physician assistant.

**SUMMARY OF FACTUAL BASIS.** The Board has determined that the rule should reference the provision in the Physician Assistant Act and the Board Rules regarding Physician Assistants that prohibits a physician from supervising a physician assistant if the physician's license is restricted.

**SUMMARY OF COMMENTS.** The Board received comments from the Texas Medical Association, which commented that the actual language of the proposed rule could subject a physician to conflicting guidance from the Texas Medical Board by expressly authorizing the physician to supervise a physician assistant, while at the same time imposing restrictions on the physi-

cian's license that would invoke the provisions of §204.205(1) of the Physician Assistant Act, prohibiting a physician from supervising a physician assistant if the physician's license is restricted.

The Board has responded to this comment by revising the proposed language to specifically reference §204.205(1) of the Physician Assistant Act. The revised language constitutes a non-substantive amendment to the proposed rule, as published. The revised rule, as adopted by the Board at a meeting on April 3, 2009 provides: (d) In accordance with §204.205(1), Texas Occupations Code, and §185.2(19) of this title (relating to Definitions), a probationer may not supervise or delegate prescriptive authority to a physician assistant if the probationer's license and practice of medicine are restricted by an order of the board.

The Board believes that this revision will satisfy the concerns expressed by this comment.

The amendment is adopted under the authority of Texas Occupations Code Annotated, §153.001 and §204.102, which provide authority for the Board to adopt rules and bylaws as necessary to govern its own proceedings, perform its duties, regulate the practice of medicine in this state, enforce this subtitle, and establish rules related to licensure, and to adopt rules to regulate physician assistants and physicians who supervise physician assistants.

#### *§189.4. Limitations on Physician Probationer's Practice.*

(a) A probationer is not authorized to supervise a physician assistant, advanced practice nurse, or surgical assistant unless expressly permitted under the probationer's order.

(b) A probationer may not delegate prescriptive authority to a physician assistant or advanced practice nurse unless expressly permitted under the probationer's order.

(c) A finding that a probationer has violated or attempted to violate subsections (a) and (b) of this section shall be considered unprofessional and dishonorable conduct likely to deceive, defraud or injure the public and is a violation of the Act.

(d) In accordance with §204.205(1), Texas Occupations Code, and §185.2(19) of this title (relating to Definitions), a probationer may not supervise or delegate prescriptive authority to a physician assistant if the probationer's license and practice of medicine are restricted by an order of the board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 16, 2009.

TRD-200901455

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

Effective date: May 6, 2009

Proposal publication date: January 9, 2009

For further information, please call: (512) 305-7016



## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

## **PART 9. TEXAS COMMISSION ON JAIL STANDARDS**

### **CHAPTER 273. HEALTH SERVICES**

#### **37 TAC §273.7**

The Texas Commission on Jail Standards adopts amendments to §273.7 concerning Tuberculosis Screening with changes to the proposed text as published in the November 28, 2008, issue of the *Texas Register* (33 TexReg 9658). The agency name in subsection (b) was changed from Texas Department of Health to the Department of State Health Services.

This amendment is being adopted to standardize language utilized and clarify when the screening is to be conducted.

This rule provides requirements for the screening of inmates for tuberculosis.

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing standards for the construction, equipment, maintenance and operation of county jails.

#### *§273.7. Tuberculosis Screening Plan.*

(a) Each facility having a capacity of 100 or more beds, or housing inmates transferred from a facility with a capacity of at least 100 beds or housing inmates from another state, shall develop and implement a plan for tuberculosis screening tests of employees, volunteers, and inmates. Inmates confined in the jail for more than 7 days shall be tested on or before the 7th day after the day of confinement. Inmates may be exempt from the screening test when the test conflicts with the tenets of an organized religion to which the individual belongs or when the test is contraindicated based on an examination by a physician. An inmate is not required to be retested at each rebooking if the inmate is booked into the facility more than once during a 12-month period, unless the inmate shows symptoms of or is known to have been exposed to tuberculosis.

(b) The tuberculosis screening plan shall be developed and implemented in accordance with 25 TAC §§97.171 - 97.180 (relating to Communicable Diseases) and the Texas Health and Safety Code, §§89.001 - 89.102 and shall be approved by the Tuberculosis Elimination Division, Department of State Health Services prior to use. The plan shall be made available to the Commission upon request. A copy of an inmate's medical records or documentation of screenings or treatment received during confinement shall accompany an inmate transferred from one correctional facility to another or to TDCJ-ID and be available for medical review upon arrival of the inmate.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 13, 2009.

TRD-200901421

Brandon Wood

Assistant Director

Texas Commission on Jail Standards

Effective date: May 3, 2009

Proposal publication date: November 28, 2008

For further information, please call: (512) 463-8236

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# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Texas Medical Board

### Title 22, Part 9

The Texas Medical Board (Board) proposes to review Chapter 174, relating to Telemedicine, §§174.1 - 174.6, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register* the Board contemporaneously proposes amendments to §§174.1, 174.2, 174.4, and 174.6.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: [rules.development@tmb.state.tx.us](mailto:rules.development@tmb.state.tx.us).

TRD-200901456

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

Filed: April 16, 2009

TRD-200901471

Jerel Booker

Associate Commissioner, Educator Quality and Standards, Texas Education Agency

State Board for Educator Certification

Filed: April 20, 2009



The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 242, Superintendent Certificate, pursuant to the Texas Government Code, §2001.039. The SBEC proposed the review of 19 TAC Chapter 242 in the February 27, 2009, issue of the *Texas Register* (34 TexReg 1451).

Relating to the review of 19 TAC Chapter 242, the SBEC finds that the reasons for adopting continue to exist and readopts the rules with changes to update the rules to reflect current law and add specificity to educator preparation and certification requirements relating to the superintendent certificate.

The SBEC is proposing new §242.1; amendments to §§242.5, 242.10, 242.15, 242.20, 242.25, and 242.30; and the repeal of §242.35, which may be found in the Proposed Rules section of this issue.

The SBEC received no comments related to the rule review of 19 TAC Chapter 242.

This concludes the review of 19 TAC Chapter 242.

TRD-200901472

Jerel Booker

Associate Commissioner, Educator Quality and Standards, Texas Education Agency

State Board for Educator Certification

Filed: April 20, 2009



Texas Medical Board

### Title 22, Part 9

The Texas Medical Board (Board) adopts the review of Chapter 183, Acupuncture, §§183.1 - 183.23, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the February 27, 2009, issue of the *Texas Register* (34 TexReg 1451).

Elsewhere in this issue of the *Texas Register*, the Board contemporaneously adopts amendments to §§183.2, 183.4, 183.10, and 183.20.

No comments were received regarding adoption of the review.

## Adopted Rule Reviews

State Board for Educator Certification

### Title 19, Part 7

The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 241, Principal Certificate, pursuant to the Texas Government Code, §2001.039. The SBEC proposed the review of 19 TAC Chapter 241 in the February 27, 2009, issue of the *Texas Register* (34 TexReg 1451).

Relating to the review of 19 TAC Chapter 241, the SBEC finds that the reasons for adopting continue to exist and readopts the rules with changes to update the rules to reflect current law and add specificity to educator preparation and certification requirements relating to the principal certificate.

The SBEC is proposing amendments to §§241.1, 241.5, 241.10, 241.15, 241.30, and 241.35; the repeal of §§241.20, 241.25, and 241.40; and new §241.20 and §241.25, which may be found in the Proposed Rules section of this issue.

The SBEC received no comments related to the rule review of 19 TAC Chapter 241.

This concludes the review of 19 TAC Chapter 241.

The agency's reason for adopting the rules contained in this chapter continues to exist.

This concludes the review of Chapter 183, Acupuncture.

TRD-200901457

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

Filed: April 16, 2009



Texas Board of Nursing

**Title 22, Part 11**

The Texas Board of Nursing (Board) adopts the review of 22 TAC Chapter 214, Vocational Nurse Education; Chapter 215, Professional Nursing Education; and Chapter 222, Advanced Practice Nurses with Prescriptive Authority, pursuant to the requirements of the Government Code §2001.039. Notice of the proposed rule review was published in the February 20, 2009, issue of the *Texas Register* (34 TexReg 1261). No comments were received concerning the Board's proposed rule review.

The Board has reviewed and considered Chapters 214, 215, and 222 for re-adoption, revision, and repeal. The Government Code §2001.039 requires each state agency to review its rules every four years and to re-adopt, re-adopt with amendments, or repeal each reviewed rule. At a minimum, an agency's review shall include an assessment of whether the reasons for initially adopting a rule continue to exist. The Board has completed its review of the rules in Chapters 214, 215, and 222 and finds that the reasons for originally adopting these rules continue to exist. Each chapter was reviewed to determine whether it was obso-

lete, reflected current legal and policy considerations, reflected current procedures and practices of the Board, and whether it was in compliance with the Government Code Chapter 2001.

The re-adoption of Chapters 214 and 215, relating to vocational and professional nursing education, is authorized under the Occupations Code §301.157. Section 301.157 authorizes the Board to prescribe minimum standards and requirements for courses and programs of study that prepare persons to become licensed registered or vocational nurses. The re-adoption of Chapter 222, relating to advanced practice nurses with prescriptive authority, is authorized under the Occupations Code §301.152. Section 301.152 authorizes the Board to: (i) adopt rules that establish specialized education or training requirements for registered nurses carrying out prescription drug orders, (ii) approve registered nurses as advanced practice nurses; and (iii) approve and renew advanced practice nurses' authority to carry out or sign prescription drug orders.

The Board re-adopts Chapters 214, 215, and 222 without changes, pursuant to the Government Code §2001.039 and the Occupations Code §301.151, which authorizes the Board to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act. This concludes the review of 22 TAC Chapters 214, 215, and 222.

TRD-200901462

James W. Johnston

General Counsel

Texas Board of Nursing

Filed: April 16, 2009



## Texas Department of Agriculture

### Request for Proposals: Home-Delivered Meal Grants Performance Monitoring

#### 1. Purpose

The Texas Department of Agriculture (TDA) is inviting proposals for performance monitoring services. TDA seeks a highly skilled contractor to conduct a comprehensive performance review of governmental and 501(c)(3) nonprofit organizations that received funding through TDA's Texans Feeding Texans: Home-Delivered Meal Grant Program, under terms and conditions established by this Request for Proposal (RFP) and TDA. The contractor chosen by TDA must be experienced, with strong references and have a current license with the Texas State Board of Public Accountancy. The contractor firm also must demonstrate experience in using the Generally Accepted Government Auditing Standards (GAGAS) and must be able to provide the services described in the time frame provided in this RFP. Respondents must execute the scope of this RFP, Affirmations and RFP Acceptance, and complete other items listed in Section 6, Form of Response, of this RFP.

#### 2. Program Overview

The Texans Feeding Texans: Home-Delivered Meal Grant Program was established by House Bill 407 during the 80th Regular Session of the Texas Legislature. The Legislature appropriated \$20,000,000 to the Program to help defray the costs of providing home-delivered meals that are not fully funded by the Department of Aging and Disability Services or an Area Agency on Aging.

Under Texas Agriculture Code (Code), §12.042, the Home-Delivered Meal Grant Program provides funding for the purpose of supplementing and extending services related directly to home-delivered meal services.

An organization is eligible to receive a grant under the Program if it:

- a. administers a home-delivered meal program and is a direct provider of home-delivered meals to Elderly persons and/or persons with a Disability;
- b. (if a nonprofit private organization) has a volunteer board of directors;
- c. practices nondiscrimination;
- d. has an accounting system or fiscal agent approved by the county where it provides meals;
- e. has a system to prevent the duplication of services to clients;
- f. has received a grant from each county in which the organization is delivering meals;
- g. has submitted an application to the Texas Department of Agriculture; and
- h. agrees to use funds received only to supplement or extend existing home-delivered meal services.

Additionally, the following requirements must be met by the grantee:

- a. Each meal to which grant funds from TDA are applied must meet 1/3 of the recommended dietary allowance (RDA) for adults and the Dietary Guidelines for Americans, or shall adhere to federal meal pattern requirements;
- b. Grantee must follow procedures and maintain facilities that comply with all applicable federal, state, and local laws and regulations related to fire, health, sanitation, and safety, and obtain all necessary permits, including all food preparation, handling, and service activities;
- c. Grantee must provide meals in accordance with the service requirements outlined in Title 40 Texas Administrative Code, §55.27(a) and (c), or other applicable local, state or federal regulations relating to the delivery, transportation packaging of home-delivered meals, or the handling of undelivered meals;
- d. Grantee must document that persons receiving a meal are Homebound Elderly persons (60 years old or older) or Homebound persons with a Disability; and
- e. Grantee shall retain all financial records, supporting documents, statistical records, and all other records relating to any grant funds received.

During fiscal year 2008, the first year of funding, \$9.5 million was granted to eligible organizations. TDA received ninety-eight (98) applications and ninety-five (95) were funded. Fiscal year 2008 grantees are currently being reviewed.

During fiscal year 2009, \$10 million was granted to eligible organizations. TDA received 194 applications. Of these, 182 applications, representing 138 organizations were funded. Grantees are required to submit quarterly expenditure reports.

#### 3. Additional Resources and Information on TDA and/or the Home-Delivered Meal Grant Program for Response to this RFP

- a. Texas Agriculture Code §12.042
- b. Texas Administrative Code, Title 4, Part 1, Chapter 1, Subchapter O
- c. TDA, Home-Delivered Meal Grant Program, and other TDA-administered grant programs at: [www.tda.state.tx.us](http://www.tda.state.tx.us).

#### 4. Desired Outcomes:

- a. Selection of a contractor to develop and conduct a comprehensive monitoring activity of TDA's Texans Feeding Texans: Home-Delivered Meal Grantees that will include:
  - i. Risk assessment of grantees;
  - ii. Verification of information supplied in initial applications;
  - iii. Verification that grantee has all current licenses necessary to administer a home-delivered meal program;
  - iv. Verification that proper paperwork is being maintained to report nutritional content of the meals being served and counted;
  - v. Verification of the number of meals being served;
  - vi. Review of documentation to determine that meals served with grant funds are going to qualifying homebound elderly and/or disabled individuals;

- vii. Verification that grant funds are expended on appropriate expenditures; and
- viii. Reporting information back to TDA regarding any findings.

b. The services provided by the selected contractor should produce the following results:

- i. Identify non-compliance with TDA Grant Agreement, executed by TDA and grantee in conjunction with payment of grant funds; and
- ii. Verify accuracy of information supplied by Grantees for both grant qualification and grant funds expenditure.

## 5. Scope

This RFP covers work completed by the selected firm in two parts.

**Part I - Planning:** Within 30 days after any award that results from this RFP, the selected applicant is to develop a detailed monitoring plan and schedule for conducting the performance review activities. This plan is to incorporate a discussion of and rationale for all elements of the project, including associated priorities, timelines and budget estimates, with a focus on the desired outcomes as previously discussed in Section 4, Desired Outcomes.

The contractor will communicate with TDA staff administering the programs to access information regarding the programs, current home-delivered meal grantees, and relevant agency records.

**Part II - Conducting Performance Monitoring:** Once the monitoring plan is received and approved by TDA, the contracted firm is responsible for working with the TDA staff to conduct and complete the performance monitoring within the required time frame. The contracted firm will also need to:

- a. Keep TDA informed of monitoring activity status via semi-monthly reports; and
- b. Provide comprehensive results of all efforts according to schedule and as requested throughout the project.

The terms of this RFP also include the General Terms and Conditions set forth in Attachment 1 to this RFP. The performance monitoring final report must be issued by August 31, 2010.

## 6. Form of Response

### a. Detailed Plan of the Monitoring Activities

Provide a detailed plan of how you or your firm would conduct proposed monitoring activities. This plan should include the relevant methods, procedures, phases, dates, and estimated hours that the contractor will incur in each phase of monitoring.

### b. Overview of the Company

Provide a description of the company, including general experience and history in performing monitoring activities, date founded, number and location of offices, and number of professionals and employees in each office, total number of professionals and employees in the company, description of specialty practice areas and company philosophy. Describe structure of company ownership (e.g., publicly held corporation, partnership, etc.) any parents, affiliates or subsidiaries of the company.

### c. Qualifications

List recent experience of the firm or professionals to be assigned to the project. Be sure to address qualifications with regard to the qualifications needed for this assignment as detailed in Sections 1, Purpose, and 4, Desired Outcomes. If relying on experience as a professional while at a different company, please indicate the name, address and contact information of the company. Please select and discuss one project that you feel best demonstrates your ability to provide the services specified

in this RFP. (Please limit your discussion to no more than two pages.) If your response to this RFP is on behalf of a firm, please submit a copy of the firm's last peer review report.

### d. Resumes

Provide brief resumes for each professional employee who will be assigned to the project. Indicate the individuals' years of experience in conducting monitoring activities, any relevant licenses they hold and how any particular area of expertise would benefit TDA. Also, demonstrate current compliance with CPE requirements. Specify who would be assigned as the primary day-to-day contact for TDA and indicate the role they played in the projects listed above.

### e. HUB Business Practices

Please describe your company's previous experience and involvement working with Historically Underutilized Businesses (HUB) certified companies (if your company is not HUB certified) or as a HUB certified company.

Please describe efforts made by your company to encourage and develop the participation of minorities and women.

### f. HUB Subcontracting Plan

In accordance with Texas Government Code §2161.252 regarding this procurement, TDA has determined that opportunities for HUB Subcontracting are probable. As such, all firms submitting a response to this RFP must fully complete the HUB Subcontracting Plan (HSP) forms which can be found at: <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/HUBSubcontractingPlan.pdf>. Any responses that do not have these completed forms shall be rejected pursuant to Texas Government Code, §2161.252(b), and will not be considered for an award of this RFP.

### g. Evidence of Insurability

The selected applicant shall be responsible for insurance and bonding and must furnish to TDA within ten (10) working days of being selected to perform this RFP, proof of insurance and bonding as follows: Insurance for professional liability, errors, omissions, or negligence arising in connection with duties under this RFP.

### h. Conflict of Interest

Please disclose any conflicts of interest. Disclose all contractual or informal business arrangements/agreements, including fee arrangements and consulting agreements between your Company and the TDA, TDA's staff, or any entity that provides services to TDA. Applicants will likewise be required to disclose any business relationships or other possible conflicts of interest regarding monitoring of any grantees.

### i. References

Please provide names, addresses, and phone numbers of at least three references.

### j. Fee Structure

Please provide your fee structure, including if applicable, hourly rates, flat fees, and other known expenses. Also provide an estimate of the total project cost.

## 7. Agreement Term

The agreement term is from date of execution by both parties until August 31, 2010. TDA retains the right to terminate the agreement for any reason and at any time, upon the payment of then earned fees and expenses. At the termination date of this project, the current vendor shall cooperate fully to transfer all publications, documents, property, equipment, and/or other material in which TDA retains ownership rights, and any other material related to work under this RFP.



## 8. Proposal Modification

Any proposal may be modified or withdrawn, at any time prior to the proposal due date. No material changes will be allowed after the expiration of the proposed due date; however, non-substantive correction or deletions may be made with the approval of TDA. TDA also reserves the right to make amendments to the RFP.

## 9. Time Schedule

Proposals are due no later than **June 1, 2009**. Proposal responses, modifications or addenda to an original response received by TDA after the specified time and date for closing will not be considered. Each firm is responsible for ensuring that its response reaches TDA before the proposed due date. Companies should submit one unbound original and three copies of their proposal to: Karen Reichek, Grants Coordinator, **IN RESPONSE TO RFP: Monitoring of Home-Delivered Meal Grants**, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, Street Address: 1700 N. Congress, Stephen F. Austin Bldg., 11th Floor, Austin, Texas 78701.

A duly authorized representative of the company must execute the response submitted to this RFP. An unsigned proposal will not be accepted. All proposals become the property of TDA. Proposals must set forth accurate and complete information as required by this RFP. Oral modifications will not be considered. Questions regarding this RFP should be submitted, in writing, to Karen Reichek, Grants Coordinator, at the address listed above or by fax, (888) 223-9048. The commissioner and TDA staff will review the responses to this RFP.

## 10. Basis of Award

The selection will be based on demonstrated competence, experience, knowledge and qualifications, as well as the proposed fee for each portion of the RFP as determined by TDA. By this RFP, however, TDA has not committed itself to employ a monitoring firm nor does the suggested scope of service or term of agreement below require that the firm be employed for any or all of those purposes. TDA is not bound to accept the lowest-priced proposal. TDA reserves the right to make those decisions after receipt of proposals and TDA's decision on these matters is final. TDA reserves the right to negotiate individual elements of any proposal and to reject any and all proposals. TDA reserves the right to meet with and negotiate regarding terms with one or more applicants.

## 11. Cost Incurred in Responding

All costs directly or indirectly related to preparation of a response to the RFP or any oral presentation required to supplement and/or clarify the RFP which may be required by TDA shall be the sole responsibility of, and shall be borne by the applicant.

## ATTACHMENT 1 - GENERAL TERMS AND CONDITIONS

**1.1 Indemnification.** The contractor agrees to defend, indemnify, and hold harmless the State of Texas, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of the contractor or any agent, employee, subcontractor, or supplier of contractor in the execution or performance of this RFP.

**1.2 Failure of Indemnification Provisions.** If for any reason the contractor fails to cooperate with the Texas Office of the Attorney General and/or the foregoing indemnification is insufficient to hold the customer harmless, then the contractor shall reimburse TDA for all amounts paid or payable by TDA as a result of such claims, which shall include, for example, costs of the Texas Office of the Attorney General of defending against any claims. The reimbursement, indemnity and contribution obligations of the contractor under this section shall ex-

tend upon the same terms and conditions to TDA employees, officers, agents, successors, assigns, licensees and customers and shall be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives, and the relevant provisions will survive the termination of any contract awarded to an applicant responding to this RFP.

**1.3 Indemnification by TDA of Contractor.** TDA can neither agree to hold the contractor harmless nor agree to indemnify the contractor, and any provisions to the contrary are void.

**1.4 TDA Duties.** The contractor's obligations under paragraph 1.2 above may be limited to the extent that the TDA (i) does not promptly notify the contractor in writing of any claim, (ii) does not provide the contractor with all reasonable assistance for the defense or settlement of such claims, except as it relates to the responsibilities of the Texas Office of the Attorney General, and (iii) does not cooperate with the Texas Office of the Attorney General in defense of such claim.

**1.5 Force Majeure.** Except as otherwise provided, neither awarded contractor nor TDA shall be liable to the other for any delay in, or failure of performance, of any requirement contained in this RFP caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance in the exercise of reasonable diligence until after the causes of delay or failure have been removed. Force majeure is defined as those causes generally recognized under Texas law as constituting impossible conditions. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

**1.6 Application of Law; Venue; Dispute Resolution.** This procurement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any action arising hereunder shall be in the state district courts of Travis County, Texas, and pursuant to the dispute resolution provisions in Chapter 2260, Texas Government Code. This RFP shall be binding upon any successor or permitted assignee. In the event of any default, dispute or nonpayment, the parties shall, in addition to and without limitation on the remedies provided under the terms of this RFP, be liable for those damages commonly available to the prevailing party under Texas law.

**1.7 Assignment or Subcontract.** Absent the express written consent of TDA, the awarded contractor may not assign or subcontract any right or duty under this RFP.

**1.8 Provision for Direct Deposit.** The electronic funds transfer (EFT) provisions of Texas law are found at Texas Government Code, Chapter 403. Certain payments from the State may be directly deposited into the contractor's bank account or may be made by warrant. Contractors eligible for, and who wish to be paid by direct deposit, must complete the form titled "Direct Deposit Authorization" and return it as soon as possible to: Comptroller of Public Accounts, Attention: Budget and Internal Accounting Division, Accounts Payable Section, LBJ State Office Building, 111 E. 17th Street, Austin, Texas 78774.

The Comptroller's office will become the "custodial agency" and in that capacity, the internal Accounts Payable Section will be responsible for initial direct deposit set up and any future changes to your direct deposit information. Consequently, it will not be necessary to register with each state agency for this purpose. Direct deposit payments will begin after the contractor's financial institution processes and accepts a test transaction that will be sent by the Comptroller's office to the contractor's bank.

The Claims Division of the Comptroller of Public Accounts oversees the statewide direct deposit program. For questions regarding the statewide process, contact the Claims Payment Processing Section,

1-800-531-5441, ext. 5-0965 or (512) 475-0965, or send an email message to: [claims.division@cpa.state.tx.us](mailto:claims.division@cpa.state.tx.us).

**1.9 Texas Family Code Eligibility.** Under §231.00, Texas Family Code (relating to child support), the vendor or applicant certifies that the individual or business entity named in this contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. All applicants and respondents to this RFP understand and acknowledge that pursuant to §231.006 of the Texas Family Code, a child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under a contract to provide property, materials, or services. Further, if selected, the applicant will provide the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application.

**1.10 Texas Government Code Eligibility.** Under §2155.004, Texas Government Code (relating to certain taxes), contractor represents that the contractor is eligible to receive this agreement and that any resulting agreement may be terminated and payment withheld if this representation is inaccurate.

**1.11 Liability for Taxes.** Contractor represents that it shall pay all taxes or similar amounts resulting from this agreement, including, but not limited to, any federal, State, or local income, sales or excise taxes of contractor or its employees. TDA shall not be liable for any taxes resulting from this Agreement.

**1.12 Suspension or Debarment; Compliance with State Laws and Rules.** Contractor represents that as the respondent to this RFP, and any of its principals, are eligible to participate in any resulting agreement and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity. Contractor further represents that the contractor is in compliance with the State of Texas statutes and rules relating to procurement and that contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>.

**1.13 Audits or Investigations by State Auditor's Office or TDA.** The contractor understands that acceptance of funds under this RFP acts as acceptance of the authority of the State Auditor's Office (SAO), any successor agency to SAO or TDA to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the SAO, SAO's successor or TDA in the conduct of the audit or investigation, including providing all records requested and providing the State Auditor or TDA with access to any information the State Auditor or TDA considers relevant to the investigation or audit. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through subcontractor and the requirement to cooperate is included in any subcontract awards.

**1.14 Access to Information by State Auditor.** The contracted firm understands that in addition to the State Auditor's access to information as provided by paragraph 1.13, above, the State Auditor will receive a copy of the contract between the agency and the contractor, and the contractor's final report. The State Auditor also has access to working papers related to procured services and all draft and final reports and memoranda of discussions with agency management

**1.15 Release of Information and Open Records.** All proposals shall be deemed, once submitted, to be the property of TDA and subject to the Texas Public Information Act (Act). Under the Act, information

submitted in response to this RFP may not be released by TDA during the proposal evaluation process or prior to the awarding of an agreement. After the evaluation process is completed by TDA and an agreement is awarded, proposals and information included therein may be subject to public disclosure under the Act.

**1.16 Media releases.** TDA is the only entity authorized to issue news releases relating to this RFP and performance hereunder by contractor.

TRD-200901519

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Filed: April 22, 2009

## Office of the Attorney General

### Notice of Intent to Amend and Extend Consultant Services Contract

The Child Support Division (CSD) of the Office of the Attorney General (OAG) currently has a consulting services contract with Deloitte Consulting, LLP of 400 West 15th Street, Suite 1700, Austin, Texas 78701. Deloitte Consulting is providing consulting services related to:

Creating project plans

Documenting requirements, use cases, activity diagrams and storyboards

Performing analysis of data for cleanup

Conducting a proof of concept for the new system development lifecycle processes and the supporting tools

Assisting with the deployment of hardware and software for the TXC-SES 2.0 development environment

Executing the sourcing strategy, developing training and deploying new organization structures.

The original contract was executed on January 22, 2007, and expired on August 31, 2007, with five options to extend. CSD and Deloitte Consulting, LLP are currently executing the second optional renewal which concludes on August 31, 2009.

Deloitte Consulting was selected as the consultant for this project after a competitive process whereby the OAG evaluated four proposals that were submitted as a result of the invitation to submit proposals that was published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 8019).

The OAG intends to extend this consulting services contract and amend it to describe Deloitte Consulting's role after submitting Business Process Redesign (BPR) recommendations. Pursuant to Texas Government Code, Chapter 2254, Subchapter B, before extending and amending the contract with Deloitte Consulting, the OAG publishes this notice and invitation to qualified and experienced consultants interested in providing the consulting services described in this notice.

#### SCOPE OF SERVICES:

The scope of work focuses on:

Providing guidance, subject matter expertise, oversight, and assistance to the OAG for Development and Implementation Continuity Assurance in the design, development and implementation of solutions recommended by the Business Process Redesign (BPR) Study completed in 2007.

Reviewing and developing quality criteria for solutions and work products produced by an implementation vendor

Developing acceptance criteria based on documented requirements

Documenting requirements for the second incremental renewal phase and new document management system for legal forms

Assessing existing internet connectivity and e-filing capabilities of the counties and clerk of courts

Developing a detailed rollout plan and strategy for a document management and imaging system

Completing a prototype of the TXCSES 2.0 application and finalizing the solution architecture

Managing a hard copy case file cleanup effort

Establishing a formalized asset management process

#### FINDING OF FACT:

The OAG is submitting a request to the Budget, Planning & Policy Division of the Governor's Office for a Finding of Fact that the requested consulting services are necessary. Extension of the contract or execution of a new contract is contingent upon receipt of this Finding of Fact.

#### CRITERIA FOR SELECTION:

The OAG intends to negotiate with Deloitte Consulting the extension and amendment to its consulting services contract to include this scope of work, unless the OAG receives a better offer for the desired consulting services. The OAG will make its selection based on demonstrated competence, knowledge, and qualifications, considering the reasonableness of the proposed fees for consulting services.

#### SUBMITTING OFFERS:

Any consultant submitting an offer in response to this notice must provide the following with the offer:

- (1) The consultant's legal name and address
- (2) A description of the consultant's experience in the business process redesign field
- (3) Information regarding the qualifications, education, and experience of the team(s) proposed to provide these consulting services
- (4) The price to perform the entire scope of services
- (5) The earliest date on which the consultant could begin to provide services
- (6) A list of three references, including any Child Support customers for which the consultant has performed services
- (7) A previous or sample BPR implementation plan that represents the consultant's work
- (8) A completed Historically Underutilized Businesses subcontracting plan (the forms can be found at <http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>)
- (9) The following completed forms (available from the OAG Contact identified below): Certification Regarding Lobbying, Consultant Assurances with Certification, and Consultant Release of Liability (to References)

In order to be considered for this Consulting Services contract, a Response should be submitted, in accordance with the instructions in this notice to the OAG by 2:00 p.m. [CST] on June 2, 2009

Telephone and facsimile responses will not be accepted. Responses may be submitted by mail to the mailing address listed below; or may be hand delivered to the physical address listed below.

#### Mailing Address:

Office of the Attorney General

Child Support Division

Attn: David Cousins, Assistant Attorney General

P.O. Box 12017

Austin, TX 78711-2017

Email: [David.Cousins@oag.state.tx.us](mailto:David.Cousins@oag.state.tx.us)

#### Physical Address:

Office of the Attorney General

Child Support Division

Attn: David Cousins, Assistant Attorney General

5500 E. Oltorf St., Room 375

Austin, TX 78741-7400

Email: [David.Cousins@oag.state.tx.us](mailto:David.Cousins@oag.state.tx.us)

#### QUESTIONS:

Questions concerning this notice and invitation should be submitted in writing or by email to the point of contact listed above.

#### OAG RIGHTS:

The OAG reserves the right to accept or reject any or all offers submitted. The OAG is under no obligation to execute any contract on the basis of this notice. The OAG will not pay for any costs incurred by any entity in responding to this notice.

TRD-200901490

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: April 21, 2009

## Comptroller of Public Accounts

### Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, Texas Government Code; Chapters 71-76, Texas Property Code, and Chapter 403, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP #193c) from qualified, independent firms to provide unclaimed property management, claims processing, outreach and related services to Comptroller. The successful respondent(s) will assist Comptroller in managing unclaimed property and related services for the state's unclaimed property program. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about June 1, 2009, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, Room 201, LBJ State Office Building, 111 East 17th Street, Austin, Texas 78774 (Issuing Office), telephone number: (512) 936-5854, to obtain a copy of the RFP. Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick-up at the above-referenced address on Friday, May 1, 2009, after 10 a.m., Central Zone Time (CZT), and during

normal business hours thereafter. Comptroller also made the complete RFP available electronically on the Electronic State Business Daily at: <http://esbd.cpa.state.tx.us> after 10 a.m. CZT on Friday, May 1, 2009.

**Non-Mandatory Letters of Intent and Questions:** All Non-Mandatory Letters of Intent and questions regarding the RFP must be sent via facsimile to the attention of Mr. Harris at: (512) 463-3669, no later than 2:00 p.m. CZT, on Friday, May 8, 2009. Official responses to questions received by the foregoing deadline will be posted electronically on the Electronic State Business Daily no later than Friday, May 15, 2009, or as soon thereafter as practical. Non-Mandatory Letters of Intent or Questions received after the deadline will not be considered. Respondents are solely responsible for confirming and are encouraged to confirm the timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

**Closing Date:** Proposals must be received in the Issuing Office at the address specified above no later than 2 p.m. CZT, on Friday, May 22, 2009. Proposals received after this time and date will not be considered. Proposals will not be accepted from respondents that do not submit proposals by the foregoing deadline. Respondents are solely responsible for confirming and are encouraged to confirm the timely receipt of Proposals in the Issuing Office.

**Evaluation and Award Procedure:** All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller reserves the right to award one or more contracts under this RFP. Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - May 1, 2009, after 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - May 8, 2009, 2 p.m. CZT; Official Responses to Questions Posted - May 15, 2009, or as soon thereafter as practical; Proposals Due - May 22, 2009, 2 p.m. CZT; Contract Execution - June 1, 2009, or as soon thereafter as practical; Commencement of Project Activities - June 1, 2009, or as soon thereafter as practical.

TRD-200901514

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: April 22, 2009

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/27/09 - 05/03/09 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/27/09 - 05/03/09 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 05/01/09 - 05/31/09 is 5.00% for Consumer/Agricultural/Commercial/credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 05/01/09 - 05/31/09 is 5.00% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-200901491

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: April 21, 2009

## Texas Education Agency

### Notice of Correction: Request for Applications Concerning Target Tech in Texas (T3) Collaborative Grant

The Texas Education Agency (TEA) published Request for Applications (RFA) #701-09-118 concerning Target Tech in Texas (T3) Collaborative Grant in the April 24, 2009, issue of the *Texas Register* (34 TexReg 2612).

The TEA is amending the name of the grant from "Target Tech in Texas (T3) Collaborative Grant" to "Target Tech in Texas (T3) Collaborative Grant--American Recovery and Reinvestment Act (ARRA) of 2009 (T3--ARRA)."

The TEA is also amending the description of eligible applicants. The corrected eligibility criteria read as follows: In addition to at least one high-need LEA, an eligible collaborative must include at least one of the following entities: (1) an LEA that can demonstrate that its teachers are effectively integrating technology and proven teaching practices into instruction and that the integration of technology has improved classroom instruction in the core academic subjects and made students better prepared to meet challenging state academic content and student academic achievement standards; (2) an institution of higher education that is in full compliance with the reporting requirements of the Higher Education Act of 1965, Section 207(f), and that has not been identified as low-performing under Section 208 of that act; (3) a for-profit business or organization that develops, designs, manufactures, or produces technology products or services, or that has substantial expertise in the application of technology in instruction; or (4) a public or private nonprofit organization with demonstrated experience in the application of educational technology to instruction. The collaborative partnership may also include other educational entities such as ESCs, libraries, and other LEAs with the resources and ability to provide technology-focused programs to the local target population.

This correction reflects a change from the original eligibility criteria as follows: In addition to at least one high-need LEA, an eligible collaborative must include at least one of the following entities: (1) an LEA that can demonstrate that its teachers are effectively integrating technology and proven teaching practices into instruction and that the integration of technology has improved classroom instruction in the core academic subjects and made students better prepared to meet challenging state academic content and student academic achievement standards; (2) other educational entities such as ESCs, libraries, and other LEAs with the resources and ability to provide technology-focused programs to the local target population; (3) an institution of higher education that is in full compliance with the reporting requirements of the Higher Education Act of 1965, Section 207(f), and that has not been identified as low-performing under Section 208 of that act; (4) a for-profit business or organization that develops, designs, manufactures, or produces technology products or services, or that has substantial expertise in the application of technology in instruction; or (5) a public or private nonprofit organization with demonstrated experience in the application of educational technology to instruction.

Further Information. For clarifying information about the RFA, contact Rebecca Schroeder, Division of Discretionary Grants, TEA, (512) 463-9269.

TRD-200901520

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: April 22, 2009



## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 1, 2009**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 1, 2009**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Angelina County; DOCKET NUMBER: 2008-1426-MSW-E; IDENTIFIER: RN101947323; LOCATION: Lufkin, Angelina County; TYPE OF FACILITY: municipal solid waste landfill; RULE VIOLATED: 30 Texas Administrative Code (TAC) §330.371(a)(2), by failing to prevent the concentration of methane gas from exceeding 5% by volume; PENALTY: \$13,000; ENFORCEMENT COORDINATOR: John Shelton, (512) 239-2563; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Buena Vista Water Supply Corporation; DOCKET NUMBER: 2009-0310-PWS-E; IDENTIFIER: RN101191542; LOCATION: Shelby County; TYPE OF FACILITY: public water supply (PWS); RULE VIOLATED: 30 TAC §290.44(h)(1)(A), by failing to provide a backflow prevention assembly; 30 TAC §290.46(f)(3)(A)(i)(III), by failing to maintain a record of the amount of chemicals used each week; 30 TAC §290.43(c)(8), by failing to maintain the facility's standpipe in accordance with American Water Works Association standards; 30 TAC §290.43(c)(3), by failing to

provide an overflow for the facility's standpipe with a cover that fits tightly with no gap over 1/16 inch; and 30 TAC §290.121(a), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan; PENALTY: \$1,060; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: City of Cotulla; DOCKET NUMBER: 2009-0044-MWD-E; IDENTIFIER: RN101920148; LOCATION: La Salle County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010153001, Permit Condition Number 2.g., and the Code, §26.121(a), by failing to prevent unauthorized discharges; 30 TAC §319.7(a) and TPDES Permit Number WQ0010153001, Monitoring and Reporting Requirements Number 3, by failing to make readily available for inspection the temperature logs for the thermometer in the refrigerator that holds samples; and 30 TAC §290.51(a)(3) and the Texas Health and Safety Code (THSC), §341.041, by failing to pay all outstanding public health service fees and late fees; PENALTY: \$25,166; Supplemental Environmental Project (SEP) offset amount of \$20,133 applied to Texas Association of Resource Conservation and Development Areas, Inc. - Unauthorized Trash Dump Clean-Up; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(4) COMPANY: Dennis James Schouten, Cornelius Thomas Schouten, and Nicholas Schouten dba D & L Dairy; DOCKET NUMBER: 2008-1097-AGR-E; IDENTIFIER: RN102844768; LOCATION: Erath County; TYPE OF FACILITY: dairy farm; RULE VIOLATED: 30 TAC §321.42(g) and TPDES General Permit Number WQ0004133000, Part X, Special Provisions A.3, by failing to develop and implement a retention control structure management plan; and 30 TAC §321.36(c), TPDES General Permit Number WQ0004133000, Part VII, Section A.5.(a)(1), and the Code, §26.121(a), by failing to ensure that the control facility is designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater; PENALTY: \$5,215; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: City of Eustace; DOCKET NUMBER: 2008-1343-MWD-E; IDENTIFIER: RN101919140; LOCATION: Eustace, Henderson County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11132001, Effluent Limitations and Monitoring Requirements Number 1 and WQ0014789001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permitted effluent limitations for biochemical oxygen demand, flow, total suspended solids, and fecal coliform; PENALTY: \$12,360; SEP offset amount of \$9,888 applied to providing first time central sewer service to three low income residences that are currently utilizing failing or inadequately designed septic systems; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: Huntsman Polymers Corporation N/K/A Huntsman Advanced Materials LLC; DOCKET NUMBER: 2009-0152-AIR-E; IDENTIFIER: RN101867554; LOCATION: Odessa, Ector County; TYPE OF FACILITY: polyethylene and polypropylene production plant; RULE VIOLATED: 30 TAC §122.145(2)(A) and (C) and §122.146(2), Federal Operating Permit Number O-02150, General Terms and Conditions, and THSC, §382.085(b), by failing to submit the Title V permit compliance certification and failing to include all deviations in two deviation reports; 30 TAC §116.115(c), New Source Review Permit Number 19123, Special Condition Number 6, and

THSC, §382.085(b), by failing to monitor 13,139 flanges/connectors, 3,116 valves, eleven pump seals, and 139 open-ended lines in volatile organic compound service; and 30 TAC §101.20(2), 40 Code of Federal Regulations (CFR) §61.357(d)(8), and THSC, §382.085(b), by failing to submit an annual report for calendar years 2004 and 2005 that summarizes all inspections during which detectable emissions are measured that could result in benzene emissions if identified; PENALTY: \$45,208; SEP offset amount of \$18,083 applied to Keep Odessa Beautiful, Inc.; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 3300 North A Street, Building 4-107, Midland, Texas 79705-5406, (432) 570-1359.

(7) COMPANY: Cory L. James; DOCKET NUMBER: 2009-0517-WOC-E; IDENTIFIER: RN103458584; LOCATION: Dublin, Erath County; TYPE OF FACILITY: wastewater operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: JOSO Enterprises, Inc. dba Shell on Plano Parkway; DOCKET NUMBER: 2009-0162-PST-E; IDENTIFIER: RN101992386; LOCATION: Plano, Collin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; and 30 TAC §115.242(1)(C) and THSC, §382.085(b), by failing to upgrade the Stage II equipment to onboard refueling vapor recovery compatible systems; PENALTY: \$7,192; ENFORCEMENT COORDINATOR: Michael Pace, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: LUCKHANY ENTERPRISES, INC. dba M&M Food Mart; DOCKET NUMBER: 2009-0066-PST-E; IDENTIFIER: RN101651016; LOCATION: Everman, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b), by failing to maintain underground storage tank (UST) records and make them immediately available for inspection; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.49(a) and the Code, §26.3475(d), by failing to provide proper corrosion protection for the UST system; 30 TAC §334.48(e), by failing to ensure that release detection equipment is routinely inspected and serviced; 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review; and 30 TAC §115.244(3) and THSC, §382.085(b), by failing to conduct monthly inspections of the Stage II vapor recovery system (VRS); PENALTY: \$11,116; ENFORCEMENT COORDINATOR: Michael Pace, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Marathon Oil Company; DOCKET NUMBER: 2009-0180-AIR-E; IDENTIFIER: RN105672901; LOCATION: near Buffalo, Leon County; TYPE OF FACILITY: sour gas production site; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain permit authorization prior to the construction and operation of a sour gas production site; PENALTY: \$1,000; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: New Horizons Ranch and Center, Inc.; DOCKET NUMBER: 2009-0191-PWS-E; IDENTIFIER: RN101278471; LOCATION: Mills County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.113(f)(5) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) for haloacetic acids; and 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the MCL for total trihalomethanes (TTHM); PENALTY: \$1,005; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: Silver Creek Lodge, Marina, and Yacht Club, Incorporated; DOCKET NUMBER: 2007-1709-MWD-E; IDENTIFIER: RN102184264; LOCATION: Burnet County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0011394001, Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 6, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for dissolved oxygen, flow, and total chlorine; 30 TAC §305.125(17), TPDES Permit Number WQ0011394001, Sludge Provisions, and the Code, §26.121(a), by failing to submit annual monitoring results at the intervals specified; and 30 TAC §305.125(1), TPDES Permit Number WQ0011394001, Monitoring and Reporting Requirements Number 1, and the Code, §26.121(a), by failing to submit monthly monitoring results at the intervals specified; PENALTY: \$17,550; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 293-5806; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(13) COMPANY: City of Stanton; DOCKET NUMBER: 2009-0259-PWS-E; IDENTIFIER: RN101392082; LOCATION: Stanton, Martin County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the MCL for TTHM; PENALTY: \$975; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 3300 North A Street, Building A-107, Midland, Texas 79705-5406, (432) 570-1359.

(14) COMPANY: Texas ARRM Investments, Inc. dba Gastar II Store 020; DOCKET NUMBER: 2008-1896-PST-E; IDENTIFIER: RN101566545; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; and 30 TAC §115.242(3)(C)(i) - (iii) and (L) and THSC, §382.085(b), by failing to maintain the Stage II VRS in proper operating condition and free of defects; PENALTY: \$10,227; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: The Dow Chemical Company; DOCKET NUMBER: 2009-0122-AIR-E; IDENTIFIER: RN102414232; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F), Permit Number 48189, General Condition Number 8, and THSC, §382.085(b), by failing to prevent a leak on the recycle pipeline of the monochlorobenzene recovery unit feed tank R-200A; PENALTY: \$3,000; SEP offset amount of \$1,200 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: US Ecology Texas, Inc.; DOCKET NUMBER: 2008-0355-MLM-E; IDENTIFIER: RN101445666; LOCATION:

Robstown, Nueces County; TYPE OF FACILITY: hazardous waste processing, storage, and disposal; RULE VIOLATED: 30 TAC §305.125, 40 CFR §264.13, Industrial Hazardous Waste (IHW) Permit Number 50052, Provision Numbers I.G. and I.J.4., by failing to follow the facility's waste analysis plan with regard to waste streams subject to treatment for land disposal; 30 TAC §305.125 and §335.431, IHW Permit Number 50052, Provision Numbers I.G., I.G.8., II.S.2., V.G.6, and V.G.7., by failing to comply with land disposal restrictions; 30 TAC §116.110(a) and §305.125, IHW Permit Number 50052, Provision Number I.G.7., and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §305.125 and §335.152, 40 CFR §264.17(a) and (b), 264.31, and 264.199(a), IHW Permit Number 50052, Provision Numbers I.G., I.I., II.B., II.H., II.R., and IV.F., by failing to minimize the possibility of fire, explosion or release of hazardous constituents and prevent placement of incompatible wastes or materials in the same tank system; 30 TAC §305.125 and §335.152, 40 CFR §264.13, IHW Permit Number 50052, Provision Numbers I.G., I.I., I.J.4., and II.R., and Water Abatement Plan (WAP), Sections 2.0., 4.2.1., 4.2.3., 4.2.5., and 5.0., by failing to follow the facility's WAP with regard to waste determinations, waste stream verification parameter selection, land disposal restriction waste conformational testing, proper analytical procedures, and waste segregation and classification; 30 TAC §305.125(11)(A) - (C) and §335.152, 40 CFR §264.73, and IHW Permit Number 50052, Provision Numbers I.G., I.I., and II.R., by failing to comply with permit monitoring and records requirements; 30 TAC §305.125 and §335.152, 40 CFR §264.31, and IHW Permit Number 50052, Provision Numbers I.G., I.I., and I.J.1., by failing to comply with permit contingency plan requirements; 30 TAC §305.125 and §335.152 and IHW Permit Number 50052, Provision Numbers I.G. and V.D.4., by failing to comply with permit design, construction, and operating requirements by not keeping an accurate record of the disposal location of waste; 30 TAC §305.125 and §335.152, 40 CFR §264.31, and IHW Permit Number 50052, Provision Numbers I.G., I.I., and II.B., by failing to operate in a manner to minimize the possibility of fire, explosion or any unplanned sudden or non-sudden release of hazardous constituents to air, soil, or surface water; 30 TAC §305.125 and §335.152, 40 CFR §264.13, IHW Permit Number 50052, Provision Number I.J.4., and WAP Section Numbers 2.0., and 3.0., by failing to follow the facility WAP by inadequately characterizing waste streams; 30 TAC §305.125 and IHW Permit Number 50052, Provision Numbers I.G. and V.D.4., by failing to comply with permit design, construction, and operating requirements by not keeping an accurate record of the disposal location of waste; and 30 TAC §305.125 and §335.152 and IHW Permit Number 50052, Provision Numbers I.G. and V.D.3.b, by failing to comply with landfill operating requirements by applying waste in lifts greater than three feet and using unacceptable daily cover for hazardous waste; PENALTY: \$92,650; SEP offset amount of \$37,060 applied to Coastal Bend Bays and Estuaries Program, Inc.; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

TRD-200901488

Kathleen C. Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: April 21, 2009



#### Enforcement Orders

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2006-1028-IHW-E on April 9, 2009 assessing \$19,287 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding N T & M, Inc. dba Fine Cleaners, Inc., Docket No. 2006-1334-DCL-E on April 9, 2009 assessing \$1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dinniah Chahin, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A agreed order was entered regarding Fallbrook Enterprises, Inc. dba Fashion Cleaners, Docket No. 2006-1544-DCL-E on April 9, 2009 assessing \$1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Cox, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Sakina, Inc. dba Express Lane 26, Docket No. 2006-1770-PST-E on April 9, 2009 assessing \$5,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Alfredo C. Cruz, Docket No. 2006-1875-LII-E on April 9, 2009 assessing \$625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy Mitchell, Staff Attorney at (512) 239-0736, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alan Karl dba Coles Crossing, Docket No. 2007-0475-PWS-E on April 9, 2009 assessing \$800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Staff Attorney at (512) 239-2053, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Don Burroughs Docket No. 2007-0805-MSW-E on April 9, 2009 assessing \$1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barham Richard, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wayne Moerman dba XXX Dairy, Docket No. 2007-0957-AGR-E on April 9, 2009 assessing \$1,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Quick & Convenience Pro - Victoria 1, L.L.C. dba Midway Truck Stop, Docket No. 2007-0976-PST-E on April 9, 2009 assessing \$31,620 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barham Richard, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding K-C Grain, LP, Docket No. 2007-1222-AIR-E on April 9, 2009 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Messer Construction Co., Inc., Docket No. 2007-1331-AIR-E on April 9, 2009 assessing \$50,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Becky Combs, Staff Attorney at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Rosebud, Docket No. 2007-1390-MWD-E on April 9, 2009 assessing \$3,825 in administrative penalties with \$765 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Loveladdy Oil Company, Inc., Docket No. 2007-1536-PST-E on April 9, 2009 assessing \$7,875 in administrative penalties with \$6,675 deferred.

Information concerning any aspect of this order may be obtained by contacting Anna Cox, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Amin Makhani dba Corner Food Mart, Docket No. 2007-1603-PST-E on April 9, 2009 assessing \$2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Cox, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding League City Paving Company, Inc., Docket No. 2007-1630-MLM-E on April 9, 2009 assessing \$7,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding James Luckey and John Luckey, Docket No. 2007-1646-MLM-E on April 9, 2009 assessing \$4,450 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Stanley Burse, Docket No. 2007-1831-LII-E on April 9, 2009 assessing \$594 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-1873, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Circle K Stores Inc., Docket No. 2007-1914-AIR-E on April 9, 2009 assessing \$8,040 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding GAS2006 Partners, LP dba Hawk Cove Grocery, Docket No. 2007-1934-PST-E on April 9, 2009 assessing \$19,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie Frazee, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Corby Hicks, Docket No. 2007-1942-LII-E on April 9, 2009 assessing \$500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Cox, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Efrain Juarez, Docket No. 2008-0090-MSW-E on April 9, 2009 assessing \$1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Duke Pendergraft dba Pendergraft Stone, Docket No. 2008-0592-WQ-E on April 9, 2009 assessing \$14,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dinniah Chahin, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pasadena Refining System, Inc, Docket No. 2008-0621-AIR-E on April 9, 2009 assessing \$33,144 in administrative penalties with \$6,628 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Century Export Company, Inc. and Humberto Saldivar, Docket No. 2008-1008-WQ-E on April 9, 2009 assessing \$1,070 in administrative penalties with \$214 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Union Tank Car Company, Docket No. 2008-1023-AIR-E on April 9, 2009 assessing \$11,530 in administrative penalties with \$2,306 deferred.



Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Albert Abusalah dba Braeswood Texaco, Docket No. 2008-1077-PST-E on April 9, 2009 assessing \$12,500 in administrative penalties with \$2,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2008-1262-AIR-E on April 9, 2009 assessing \$52,879 in administrative penalties with \$10,575 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. I. du Pont de Nemours and Company, Docket No. 2008-1315-IWD-E on April 9, 2009 assessing \$15,150 in administrative penalties with \$3,030 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding South Texas Aggregates, Inc., Docket No. 2008-1352-EAQ-E on April 9, 2009 assessing \$36,400 in administrative penalties with \$7,280 deferred.

Information concerning any aspect of this order may be obtained by contacting Lauren Smitherman, Enforcement Coordinator at (512) 239-5223, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ona Van Dorn, Docket No. 2008-1414-PST-E on April 9, 2009 assessing \$2,625 in administrative penalties with \$525 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Huntsman Polymers Corporation N/K/A Huntsman Advanced Materials LLC, Docket No. 2008-1424-AIR-E on April 9, 2009 assessing \$39,774 in administrative penalties with \$7,954 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Se Young Corporation dba Family Mart, Docket No. 2008-1434-PST-E on April 9, 2009 assessing \$6,271 in administrative penalties with \$1,254 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Oxera Corporation, Docket No. 2008-1440-MLM-E on April 9, 2009 assessing \$1,875 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Oil Corporation, Docket No. 2008-1475-AIR-E on April 9, 2009 assessing \$2,599 in administrative penalties with \$519 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jose Perales, Docket No. 2008-1482-PST-E on April 9, 2009 assessing \$3,675 in administrative penalties with \$735 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Extrusion Plus LLC, Docket No. 2008-1493-AIR-E on April 9, 2009 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Carlie Konkol, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tiger Glenn Apartments, Inc., Docket No. 2008-1498-PST-E on April 9, 2009 assessing \$2,625 in administrative penalties with \$525 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dale Risinger dba Loma Linda Water Supply, Docket No. 2008-1533-PWS-E on April 9, 2009 assessing \$600 in administrative penalties with \$120 deferred.

Information concerning any aspect of this order may be obtained by contacting John Shelton, Enforcement Coordinator at (512) 239-2563, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bayer MaterialScience LLC, Docket No. 2008-1546-AIR-E on April 9, 2009 assessing \$2,130 in administrative penalties with \$426 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TXI Operations, L.P., Docket No. 2008-1547-AIR-E on April 9, 2009 assessing \$2,900 in administrative penalties with \$580 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Carmax Auto Superstores, Inc., Docket No. 2008-1569-AIR-E on April 9, 2009 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2008-1584-AIR-E on April 9, 2009 assessing \$27,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Bryan Elliott, Enforcement Coordinator at (512) 239-6162, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Red River Redevelopment Authority, Docket No. 2008-1589-IWD-E on April 9, 2009 assessing \$12,850 in administrative penalties with \$2,570 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NNY, Inc. dba A & I Food Store, Docket No. 2008-1592-PST-E on April 9, 2009 assessing \$15,570 in administrative penalties with \$3,114 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cal Development, Inc. dba Scott Texaco, Docket No. 2008-1603-PST-E on April 9, 2009 assessing \$12,646 in administrative penalties with \$2,529 deferred.

Information concerning any aspect of this order may be obtained by contacting Brianna Carlson, Enforcement Coordinator at (956) 430-6021, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mike Bowman dba Bowman's Mobile Tire Service, Docket No. 2008-1605-MSW-E on April 9, 2009 assessing \$2,625 in administrative penalties with \$525 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INVISTA S.a.r.l., Docket No. 2008-1609-AIR-E on April 9, 2009 assessing \$3,680 in administrative penalties with \$736 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gary Lane Nutt dba Nutt Feedyard, Docket No. 2008-1626-AGR-E on April 9, 2009 assessing \$2,140 in administrative penalties with \$428 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Advanced Hydrocarbon Corporation, Docket No. 2008-1627-MSW-E on April 9, 2009 assessing \$1,050 in administrative penalties with \$210 deferred.

Information concerning any aspect of this order may be obtained by contacting John Shelton, Enforcement Coordinator at (512) 239-2563, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KNJ Enterprises Inc. dba Speedy Express 3, Docket No. 2008-1640-PST-E on April 9, 2009 assessing \$20,195 in administrative penalties with \$4,039 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nelson Bros. Ready Mix, Ltd., Docket No. 2008-1647-AIR-E on April 9, 2009 assessing \$1,975 in administrative penalties with \$395 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Barr/Principle Builders, LLC, Docket No. 2008-1658-WQ-E on April 9, 2009 assessing \$900 in administrative penalties with \$180 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of San Antonio, Docket No. 2008-1672-EAQ-E on April 9, 2009 assessing \$2,250 in administrative penalties with \$450 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Whitesboro, Docket No. 2008-1673-MWD-E on April 9, 2009 assessing \$5,160 in administrative penalties with \$1,032 deferred.

Information concerning any aspect of this order may be obtained by contacting Evette Alvarado, Enforcement Coordinator at (512) 239-2573, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Point, Docket No. 2008-1715-MWD-E on April 9, 2009 assessing \$11,524 in administrative penalties with \$2,304 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Itasca, Docket No. 2008-1729-MWD-E on April 9, 2009 assessing \$4,580 in administrative penalties with \$916 deferred.

Information concerning any aspect of this order may be obtained by contacting Evette Alvarado, Enforcement Coordinator at (512) 239-2573, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Forest Glen, Inc., Docket No. 2008-1754-MWD-E on April 9, 2009 assessing \$4,485 in administrative penalties with \$897 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dean Word Company, Ltd., Docket No. 2008-1765-WQ-E on April 9, 2009 assessing \$17,250 in administrative penalties with \$3,450 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Thornton, Docket No. 2008-1767-MWD-E on April 9, 2009 assessing \$3,475 in administrative penalties with \$695 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Top New Wave, Inc. dba Riverside Shell, Docket No. 2008-1768-PST-E on April 9, 2009 assessing \$9,692 in administrative penalties with \$1,938 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Insulfoam LLC, Docket No. 2008-1770-AIR-E on April 9, 2009 assessing \$1,925 in administrative penalties with \$385 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rip Griffin Truck Service Center, Inc., Docket No. 2008-1779-AIR-E on April 9, 2009 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dale K. Farrow dba Reclamation Contractors of Texas, Docket No. 2008-1785-WQ-E on April 9, 2009 assessing \$3,600 in administrative penalties with \$720 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at 409-898-3838, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAVE N MORE CORPORATION dba Save One Stop, Docket No. 2008-1855-PST-E on April 9, 2009 assessing \$2,414 in administrative penalties with \$482 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding M. KASHMIRI MANAGEMENT, INC. dba Star Market, Docket No. 2008-1873-PST-E on April 9, 2009 assessing \$3,073 in administrative penalties with \$614 deferred.

Information concerning any aspect of this order may be obtained by contacting Brianna Carlson, Enforcement Coordinator at (956) 430-6021, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding O'Donnell Oil & Butane Company, Inc., Docket No. 2008-1874-PST-E on April 9, 2009 assessing \$3,710 in administrative penalties with \$742 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NILA AKASH ENTERPRISES, INC. dba Express Lane Food Mart, Docket No. 2008-1954-PST-E on April 9, 2009 assessing \$2,721 in administrative penalties with \$544 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Electra, Docket No. 2009-0004-PWS-E on April 9, 2009 assessing \$215 in administrative penalties with \$43 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A citation was entered regarding Crystal Falls Car Wash, Inc., Docket No. 2008-1550-PST-E on April 9, 2009 assessing \$3,500 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A citation was entered regarding Charles L. Warren, Docket No. 2008-1594-WOC-E on April 9, 2009 assessing \$210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A citation was entered regarding Harlie G. Adams, Docket No. 2008-1689-WOC-E on April 9, 2009 assessing \$210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A citation was entered regarding Antonio T. Scolley, Docket No. 2008-1693-WOC-E on April 9, 2009 assessing \$210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A citation was entered regarding Tommy Raper, Docket No. 2008-1694-WOC-E on April 9, 2009 assessing \$210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A citation was entered regarding Mike L. Mayfield, Docket No. 2008-1698-WOC-E on April 9, 2009 assessing \$175 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A citation was entered regarding James Oxford, Docket No. 2008-1757-WOC-E on April 9, 2009 assessing \$210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Issa Ahmad d/b/a/ Houston Mart, Docket No. 2005-1144-PST-E on April 9, 2009 assessing \$2,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200901487

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 21, 2009



#### Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 1, 2009**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas

78711-3087 and must be **received by 5:00 p.m. on June 1, 2009**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Carrizo Waste, Inc.; DOCKET NUMBER: 2007-2011-MWD-E; TCEQ ID NUMBER: RN103729943; LOCATION: near the intersection of State Highway (SH) 21 and Carrizo Creek, approximately 1,000 feet south of SH 21, and approximately 3,800 feet west of Carrizo Creek, Nacogdoches County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1) and §309.3(g)(2) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ00145100001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; 30 TAC §305.125(17) and TPDES Permit Number WQ00145100001, Sludge Provisions, by failing to submit the annual sludge reports for the monitoring periods ending July 31st for the years 2005 - 2007; 30 TAC §30.350(j) and TPDES Permit Number WQ00145100001, Other Requirements Number 1, by failing to provide a licensed operator to operate the facility at least five days per week; 30 TAC §305.125(1) and §319.5(b), and TPDES Permit Number WQ00145100001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to collect samples and measure for each parameter at the minimum frequency specified in the permit; 30 TAC §319.11(d) and TPDES Permit Number WQ00145100001, Operational Requirements Number 5, by failing to properly install and maintain flow measurement equipment; 30 TAC §305.125(11)(B) and TPDES Permit Number WQ00145100001, Operational Requirements Numbers 5, by failing to properly install and maintain flow measurement equipment; 30 TAC §305.125(11)(B) and TPDES Permit Number WQ00145100001, Monitoring and Reporting Requirements Number 3.b., by failing to maintain monitoring and reporting records at the facility; 30 TAC §305.125(1), TWC, §26.121(a), and TPDES Permit Number WQ00145100001, Effluent Limitations and Monitoring Requirements Number 4, by failing to prevent the discharge and accumulations of excessive and floating solids into the receiving stream; 30 TAC §305.125(1), TWC, §26.121(a), and TPDES Permit Number WQ00145100001, Permit Conditions Number 2.d., by failing to prevent the discharge of partially treated sewage into the receiving stream; 30 TAC §305.125(9) and TPDES Permit Number WQ00145100001, Monitoring and Reporting Requirements Number 7.a., by failing to report to the TCEQ any noncompliance which may endanger human health or safety or the environment; 30 TAC §317.4(a)(8), by failing to install an air gap or backflow prevention device between the connection of a public water supply system and a wastewater treatment facility; 30 TAC §§305.125(1), 317.4(g)(4)(B)(iii), and 317.7(a), and TPDES Permit Number WQ00145100001, Operational Requirements Number 1, by failing to ensure that the facility and all of its treatment systems are properly operated and maintained; and 30 TAC §305.125(1) and §317.4(d)(2) and TPDES Permit Number WQ00145100001, Operational Requirements Number 1, by failing to ensure that the facility and all of its treatment systems are properly operated and maintained; PENALTY: \$45,800; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Charles E. Schram III; DOCKET NUMBER: 2008-1657-WOC-E; TCEQ ID NUMBER: RN105599187; LOCATION: Phantom Hill Circle, Lot 362, May, Brown County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §30.5(a) and §30.381(b), TWC, §37.003, and Texas Health and Safety

Code (THSC), §341.034(b), by failing to have a valid, effective public water system operator license issued by the commission prior to performing process control duties for the production and distribution of drinking water; PENALTY: \$1,992; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(3) COMPANY: City of Gatesville; DOCKET NUMBER: 2009-0043-MWD-E; TCEQ ID NUMBER: RN101613685; LOCATION: 1,200 feet west of where SH 36 crosses Stillhouse Branch, Coryell County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a), 30 TAC §305.125(4), TPDES Permit Number WQ0010176002, Permit Conditions Number 2.g., by failing to prevent an unauthorized discharge of wastewater into or adjacent to water in the State; PENALTY: \$1,975; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: City of Newark; DOCKET NUMBER: 2007-1065-MWD-E; TCEQ ID NUMBER: RN102287984; LOCATION: east bank of Derrett Creek immediately south of the Newark Beach Road Bridge, approximately 850 feet west of the intersection of Rogers Road and Berke Street, Newark, Wise County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a), TPDES Permit Number 11626001, Effluent Limitations and Monitoring Requirement Numbers 1 and 6, and TCEQ AO, Docket Number 2003-0014-MWD-E, by failing to comply with the permitted effluent limits for dissolved oxygen (DO), total suspended solids (TSS), and ammonia-nitrogen (NH<sub>3</sub>-N); PENALTY: \$21,812, Supplemental Environmental Project offset amount of \$21,812 applied to Texas Association of Resource Conservation and Development Areas, Inc. - Household Hazardous Waste Collection program; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Derek Broussard dba Broussard Auto Parts & Repair; DOCKET NUMBER: 2007-0102-MLM-E; TCEQ ID NUMBER: RN100691674; LOCATION: 99 Green Avenue, Orange, Orange County; TYPE OF FACILITY: inactive auto repair station; RULES VIOLATED: 30 TAC §334.47(a)(2), 334.54(b), and 334.54(d)(2), by failing to permanently remove from service, no later than 60 days after the prescribed implementation date, five underground storage tanks (USTs) for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, or ensure that any residue from stored regulated substances which remained in the temporary out-of-service UST shall not exceed 2.5 centimeters at the deepest point and not exceed 0.3 percent by weight of the system at full capacity; 30 TAC §334.7(d)(3), by failing to provide an amended registration to the TCEQ for any change or additional information regarding USTs within 30 days of the date on which the owner or operator first became aware of the change or addition; 30 TAC §324.6 and 40 Code of Federal Regulations (CFR) §279.22(b) and (d), by failing to ensure that containers and aboveground tanks used to store used oil at the facility are in good condition (no severe rusting, apparent structural defects or deterioration), and not leaking, and by failing to, upon detection of a release of used oil to the environment, stop the release, contain the release, properly clean up and manage the release, and if necessary, repair/replace any leaking used oil storage containers prior to returning them to service; and 30 TAC §324.6 and 40 CFR §279.22(c)(1), by failing to properly label or mark used oil containers with the words "Used Oil;" PENALTY: \$5,775; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175,

(512) 239-0654; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: Ernest H. Muntz and Mary Muntz; DOCKET NUMBER: 2007-1254-PWS-E; TCEQ ID NUMBER: RN104913140 and RN101176162; LOCATION: 2.4 miles north of Highway 390 on the west side of United States (US) Highway 59, Marshall, Harrison County; TYPE OF FACILITY: public water supply; RULES VIOLATED: THSC, §341.034(b) and 30 TAC §30.381(b), by failing to obtain a valid public water system operator license prior to operating a public water system; and TCEQ Default Order (DO) 2004-1470-PWS-E, Ordering Provision Number 1, by failing to pay the \$10,413 administrative penalty; PENALTY: \$10,413; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: Farah Chaudhry aka Nick Chaudhry dba Nicks Food Mart 2; DOCKET NUMBER: 2008-1035-PST-E; TCEQ ID NUMBER: RN102959814; LOCATION: 3003 Durst Street, Nacogdoches, Nacogdoches County; TYPE OF FACILITY: former convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, two USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition; PENALTY: \$5,985; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) COMPANY: Genesis Quality Aggregates, Ltd.; DOCKET NUMBER: 2008-1026-MLM-E; TCEQ ID NUMBER: RN105456040; LOCATION: 8035 North US Highway 277, Maverick County; TYPE OF FACILITY: sand and gravel processing plant; RULES VIOLATED: 30 TAC §116.110(a), and THSC, §382.085(b) and §382.0518(a), by failing to obtain authorization for a source of air emissions; 30 TAC §111.111(a)(8)(A) and THSC, §382.085(b), by failing to maintain visible emissions below the maximum allowable quantity of 30% opacity over a six minute average; and 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with industrial activities; PENALTY: \$5,000; STAFF ATTORNEY: Tommy Tucker Henson II, Litigation Division, MC 175, (512) 239-0946; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(9) COMPANY: Heiser Hollow Partners, LLC; DOCKET NUMBER: 2008-1360-EAQ-E; TCEQ ID NUMBER: RN105506901; LOCATION: approximately 1,600 feet east of Farm-to-Market (FM) 306 and FM 2673 intersection, Comal County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §213.23(a)(1), by failing to obtain approval of a Contributing Zone Plan prior to beginning construction of a regulated activity over the Edwards Aquifer Contributing Zone; PENALTY: \$1,500; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 6939; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: International Airport Square Investment, Ltd. dba Roadway Inn International Airport; DOCKET NUMBER: 2007-1014-MWD-E; TCEQ ID NUMBER: RN103915674; LOCATION: approximately 1,000 feet east of US Highway 59 and 2,000 feet southwest of the intersection of Will Clayton Parkway and US

Highway 59, Harris County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1) and TPDES Permit Number 14405001, Sludge Provisions Section II(E), by failing to provide and maintain the sludge management records; 30 TAC §319.7(c), by failing to provide and maintain the required records; 30 TAC §305.125(1) and TPDES Permit Number 14405001, Monitoring and Reporting Requirement Number 1, by failing to provide and maintain the required records; 30 TAC §305.125(1) and §317.6(b)(3)(B) and TPDES Permit Number 14405001, Effluent Limitations and Monitoring Requirements Number 2, by failing to design the contact chamber to provide a minimum average hydraulic residence time of 20 minutes at the design peak hydraulic flow; and 30 TAC §317.7(b), by failing to have railings that conform with guidelines contained in the Occupational Safety and Health Act, Paragraph 1910.23; PENALTY: \$39,900; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(11) COMPANY: Joyce Carter dba PJ's One Stop; DOCKET NUMBER: 2008-1278-PST-E; TCEQ ID NUMBER: RN101844512; LOCATION: 5437 FM Road 565 North, Baytown, Chambers County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(6) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for inspection upon request by commission personnel; 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor space manifold and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; 30 TAC §334.10(b), by failing to maintain the required UST records and make them immediately available for the inspection upon request by agency personnel; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the USTs; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.50(d)(1)(B)(ii) and TWC, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; 30 TAC §334.50(d)(4)(A)(i) and TWC, §26.3475(c)(1), by failing to conduct inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.50(d)(4)(A)(ii)(II) and TWC, §26.3475(c)(1), by failing to perform an automatic test for substance loss that can detect a release which equals or exceeds a rate of 0.2 gallons per hour from any portion of the tank which contains regulated substances; and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel each operating day; PENALTY: \$13,092; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(12) COMPANY: Moss Lake Water Supply Corporation; DOCKET NUMBER: 2006-0743-MLM-E; TCEQ ID NUMBER: RN102675170 and RN101274314; LOCATION: north of Moss Lake on Spur 1201

and Northridge Drive, Cooke County; TYPE OF FACILITY: retail public water utility and public water system; RULES VIOLATED: TCEQ AO, Docket Number 2004-0450-PWS-E, Ordering Provision 2.f. and 30 TAC §290.41(c)(1)(F), by failing to have a sanitary control easement covering all property within 150 feet of the well; TCEQ AO, Docket Number 2004-0450-PWS-E, Ordering Provision 2.h., 30 TAC §290.45(b)(1)(C)(ii), and THSC, §341.0315, by failing to provide a minimum total storage capacity of 200 gallons per connection for a public water system having 50 to 250 connections; 30 TAC §290.42(e)(5), by failing to provide a housed and locked enclosure for hypochlorinator solution containers and pumps, to protect them from vandalism and adverse weather conditions; 30 TAC §290.43(c)(4), by failing to equip the ground storage tank with a water level indicator located at the tank site; 30 TAC §290.43(d)(3), by failing to equip all air compressor injection lines for pressure tanks with a filter or other device to prevent compressor lubricants and other contaminants from entering the pressure tank; 30 TAC §290.46(d)(2)(A), by failing to maintain the residual disinfectant concentration within the farthest reaches of the distribution system at a minimum of 0.2 milligrams/Liter (mg/L) free chlorine as required; 30 TAC §290.46(j), by failing to complete a customer service inspection certification prior to providing continuous water service to new construction or on any existing service; 30 TAC §290.46(m)(1), by failing to inspect the pressure tank annually; 30 TAC §290.121(a), by failing to maintain a monitoring plan; 30 TAC §290.46(m)(4), by failing to maintain all distribution system lines and related appurtenances in a watertight condition; and TCEQ AO, Docket Number 2004-0450-PWS-E, Ordering Provision 2.c.ii, 30 TAC §291.93(3), TWC, §13.139(d), by failing to provide a written planning report to the executive director for a utility possessing a certificate of convenience and necessity that has reached or exceeded 85% of its capacity; PENALTY: \$4,453; STAFF ATTORNEY: Dinniah Chahin, Litigation Division, MC 175, (512) 239-0617; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Olmito Water Supply Corporation; DOCKET NUMBER: 2007-0686-MWD-E; TCEQ ID NUMBER: RN103888004; LOCATION: northeast of Olmito, approximately 9,200 feet south of SH 100 and 6,600 feet east of FM Road 803, Cameron County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a), TPDES Permit Number WQ0013817001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and TCEQ AO Docket Number 2005-0853-MWD-E, by failing to comply with the permitted effluent limits; PENALTY: \$8,800; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247.

(14) COMPANY: Patriot Car Wash LLC; DOCKET NUMBER: 2008-0235-WQ-E; TCEQ ID NUMBER: RN104633680; LOCATION: 1815 Ranch Road 620 North, Lakeway, Travis County; TYPE OF FACILITY: car wash, which is authorized to reuse industrial reclaimed water; RULES VIOLATED: 30 TAC §210.56(f)(3), by failing to cease irrigating with industrial reclaimed wastewater when the ground was saturated; PENALTY: \$1,070; STAFF ATTORNEY: Benjamin Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(15) COMPANY: Price Construction, LTD; DOCKET NUMBER: 2007-0876-AIR-E; TCEQ ID NUMBER: RN102743747; LOCATION: 2538 Broadbent Avenue, Del Rio, Val Verde County; TYPE OF FACILITY: portable asphalt plant; RULES VIOLATED: 30 TAC §101.201(e) and THSC, §382.085(b), by failing to notify the TCEQ of an excess opacity event; and 30 TAC §111.111(a)(8)(A) and THSC, §382.085(b), by allowing excess opacity emissions; PENALTY:

\$5,145; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(16) COMPANY: Tarek Khalaf; DOCKET NUMBER: 2008-0789-PST-E; TCEQ ID NUMBER: RN101869709; LOCATION: 1801 Highway 16 South, Graham, Young County; TYPE OF FACILITY: four inactive USTs; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of occurrence of the change or addition; and 30 TAC §334.47(a)(2) and §334.54(b)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, and by failing to maintain all piping, pump, manways, tank access points and ancillary equipment in a capped, plugged, locked and/or otherwise secured manner to prevent access, tampering or vandalism by unauthorized persons; PENALTY: \$6,300; STAFF ATTORNEY: Tommy Tucker Henson II, Litigation Division, MC 175, (512) 239-0946; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(17) COMPANY: Tony Hutcheson dba Elm Grove Mobile Home Park; DOCKET NUMBER: 2007-1911-PWS-E; TCEQ ID NUMBER: RN101438380; LOCATION: 2201 Research Boulevard, Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A) and THSC, §341.033(d), by failing to collect water samples for bacteriological analysis during the months of September 2006 and February - May 2007, and by failing to provide public notification of the failure to sample during the months of September 2006, February 2007, and March 2007; and 30 TAC §290.51(a)(3), by failing to pay all annual and late Public Health Service fees for TCEQ Financial Administration Account Number 91520156 for Fiscal Years 2001 - 2007; PENALTY: \$2,062; STAFF ATTORNEY: Tommy Tucker Henson II, Litigation Division, MC 175, (512) 239-0946; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3520, (806) 796-7092.

TRD-200901492

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: April 21, 2009



#### Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 1, 2009**. The commission will consider any writ-

ten comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 1, 2009**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Gulf, Colorado & San Saba Railway Corporation; DOCKET NUMBER: 2008-1566-WR-E; TCEQ ID NUMBER: RN105575674; LOCATION: approximately four miles northwest of the City of Lometa, Lampasas County; TYPE OF FACILITY: earthen embankment that serves as a railroad bridge; RULES VIOLATED: 30 TAC §297.11 and TWC, §11.121, by failing to obtain appropriate authorization prior to storing or diverting state water associated with the impoundment it created when it constructed an embankment to replace a railroad bridge over Cottonwood Branch; PENALTY: \$2,000; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Highland Park Water Supply Corporation; DOCKET NUMBER: 2008-1488-PWS-E; TCEQ ID NUMBER: RN101254407; LOCATION: approximately 1/2 mile northwest of the intersection of County Road (CR) 3590 and 3570 on CR 3590 near Valley Mills, Bosque County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.45(b)(1)(C)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a well capacity of 0.6 gallons per minute (gpm) per connection at each pump station or pressure plane; 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c), by failing to provide two or more pumps having a total capacity of 2.0 gpm per connection at each pump station or pressure plane; 30 TAC §290.41(c)(1)(F), by failing to provide a sanitary control easement covering all land within 150 feet of the well; 30 TAC §290.46(n)(3), by failing to maintain copies of well completion data such as well material setting data, geological log, scaling information (pressure cementing and surface protection), disinfection, information, microbiological sample results, and a chemical analysis report of a representative sample of water from the well kept on file as long as the well remains in service; 30 TAC §290.46(m)(1)(A), by failing to perform an annual inspection of the facility's ground storage tank; 30 TAC §290.46(m)(1)(B), by failing to conduct an annual inspection of the water facility's pressure tank; 30 TAC §290.46(s)(1), by failing to calibrate the water facility's well meter at least once every three years; and 30 TAC §290.46(t), by failing to maintain a legible sign at each production, treatment, and storage facility that includes the name of the water supply and an emergency telephone number where a responsible official can be contacted; PENALTY: \$1,008; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.



(3) COMPANY: Jason Rustman; DOCKET NUMBER: 2008-1514-WQ-E; TCEQ ID NUMBER: RN105457766; LOCATION: 3200 Wasson Road, Big Spring, Howard County; TYPE OF FACILITY: construction site for a horse arena and parking lot; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (40 CFR) Part 122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities under a Texas Pollutant Discharge Elimination System (TPDES) Construction General permit; PENALTY: \$2,100; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(4) COMPANY: Joe Ben Wolf; DOCKET NUMBER: 2008-0398-PST-E; TCEQ ID NUMBER: RN101863165; LOCATION: Highway 149, Longview, Gregg County; TYPE OF FACILITY: property; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, two underground storage tanks (USTs) for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change; PENALTY: \$11,550; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0265; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: Joel Garza; DOCKET NUMBER: 2007-1830-MLM-E; TCEQ ID NUMBER: RN105078810; LOCATION: 17900 Citrus Drive, Edinburg, Hildago County; TYPE OF FACILITY: unauthorized municipal solid waste disposal site; RULES VIOLATED: 30 TAC §111.201 and THSC, §382.085(b), by failing to comply with the general prohibition on outdoor burning by burning approximately ten cubic yards of municipal solid waste, including treated wood, sheetrock, foam insulation, five gallon buckets, wiring, paper, roofing shingles, and cardboard at the site; and 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste by allowing 30 cubic yards of municipal solid waste, including treated wood, sheetrock, foam insulation, five gallon buckets, wiring, paper, roofing shingles, and cardboard, to be disposed of at the site; PENALTY: \$2,370; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0265; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(6) COMPANY: Martha Chapman aka Martha K. Chapman; DOCKET NUMBER: 2008-0986-PST-E; TCEQ ID NUMBER: RN102896404; LOCATION: 24802 Ima Ruth Parkway, San Antonio, Bexar County; TYPE OF FACILITY: former retail gasoline station; RULES VIOLATED: 30 TAC §334.7(a)(1)(A), by failing to register USTs with the commission; and 30 TAC §334.47(a)(2), by failing to permanently remove from service no later than 60 days after the prescribed upgrade implementation date, two USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: \$16,000; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: Mohammad Rafiul Habib dba South Buckner Food Mart; DOCKET NUMBER: 2006-0798-PST-E; TCEQ ID NUMBER: RN101543494; LOCATION: 521 South Buckner Boulevard, Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking cor-

rective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel; and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST fees and associated late fees for TCEQ Financial Account Number 0060105U for Fiscal Years 2004 - 2007; PENALTY: \$3,885; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: New Star Holdings, L.L.C. dba Friendswood Texaco 106 aka Friendswood Shell and Northstar Equities, Inc.; DOCKET NUMBER: 2008-0879-PST-E; TCEQ ID NUMBER: RN101803757; LOCATION: 4550 Farm-to-Market Road 2351, Friendswood, Harris County; TYPE OF FACILITY: convenience station with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(5) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them available for inspection upon request by agency personnel; 30 TAC §115.242(1)(C), (3)(L), and THSC, §382.085(b), by failing to upgrade the Stage II equipment to onboard refueling vapor recovery compatible systems, and by failing to maintain the Stage II vapor recovery system in proper operating condition as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system; 30 TAC §115.248(2) and THSC, §382.085(b), by failing to ensure that at least one station representative receives training and instruction in the operation and maintenance of the Stage II vapor recovery system within three months of departure of the previously trained employee; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: \$4,725; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Richard Billings dba Oak Hill Ranch Water Company; DOCKET NUMBER: 2008-1651-PWS-E; TCEQ ID NUMBER: RN101209914; LOCATION: 234 Sandy Oaks Drive, Sequin, Guadalupe County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data to the TCEQ by July 1st of each year; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay all annual and late Public Health Services fees for TCEQ Financial Administration Account Number 90940085 for Fiscal Years 1993 - 2008 to the TCEQ in a timely manner; PENALTY: \$669; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: Roberto Lugo; DOCKET NUMBER: 2007-1697-LII-E; TCEQ ID NUMBER: RN105314231; LOCATION: 1624 Mary Street, Corpus Christi, Nueces County; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: 30 TAC §30.5(b) and §344.4(a), TWC, §37.003, and Texas Occupancy Code §1903.251, by failing to possess a license or registration prior to advertising or representing to the public that services, for which a license or registration is



required, can be performed; PENALTY: \$262; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0265; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

TRD-200901493

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: April 21, 2009



#### Notice of Opportunity to Comment on Shut Down/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 1, 2009**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 1, 2009**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Jesus Rivera dba El Burrito Stop N Go; DOCKET NUMBER: 2008-1572-PST-E; TCEQ ID NUMBER: RN105574321; LOCATION: 1216 West Veterans Boulevard, Palmview, Hidalgo County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vi)(I), (B),

and (5)(B)(i), by failing to obtain a UST delivery certificate by submitting a properly completed UST registration and self-certification form to the agency in a timely manner; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and 30 TAC §334.50(b)(1)(A) and (d)(1)(B)(ii) and TWC, §26.3475(c)(1), by failing to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; PENALTY: \$7,365; STAFF ATTORNEY: Tommy Tucker Henson II, Litigation Division, MC 175, (512) 239-0946; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(2) COMPANY: Robert McAdams; DOCKET NUMBER: 2008-1490-PST-E; TCEQ ID NUMBER: RN102488780; LOCATION: 14758 Farm-to-Market Road 59, Athens, Henderson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d), 30 TAC §334.49(a), and TCEQ Agreed Order (AO), Docket Number 2005-1850-PST-E, Ordering Provision Number 2.b.i, by failing to provide proper corrosion protection for the UST system; 30 TAC §37.815(a) and (b) and TCEQ AO, Docket Number 2005-1850-PST-E Ordering Provisions Number 2.b.ii, by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs; TWC, §26.3475(c)(1), 30 TAC §334.50(b)(1)(A), and TCEQ AO, Docket Number 2005-1850-PST-E Ordering Provision Number 2.b.iii, by failing to provide proper release detection for the UST system; 30 TAC §334.7(d)(3), by failing to provide written notice of any change or additional information to the agency within 30 days from the date of the occurrence of the change or addition; and TWC, §5.702, 30 TAC §334.22(a), and TCEQ AO, Docket Number 2005-1850-PST-E Ordering Provision Number 2.a, by failing to pay UST fees for TCEQ Financial Account Number 0055137U and associated late fees for Fiscal Years 2003 - 2007; PENALTY: \$46,145; STAFF ATTORNEY: Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-200901494

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: April 21, 2009



#### Notice of Water Quality Applications

The following notices were issued during the period of March 30, 2009 through April 9, 2009.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

## INFORMATION SECTION

CITY OF MISSION has applied for a renewal of TPDES Permit No. WQ0010484001 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 9,000,000 gallons per day. The facility is located south of the City of Mission, approximately 1,000 feet southwest of the intersection of Farm-to-Market Road 1016 and U.S. Highway 83 in Hidalgo County, Texas.

CITY OF BENJAMIN has applied for a renewal of Permit No. WQ0011162001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 42,500 gallons per day via surface irrigation of 10.5 acres of non-public access pasture land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located south of the City of Benjamin, approximately 0.75 mile south of the intersection of U.S. Highway 82 and State Highway 6 and approximately 800 feet west of State Highway 6 in Knox County, Texas.

LONE STAR INDUSTRIES INC. which operates Maryneal Cement Plant, a Portland and masonry cement manufacturer has applied for a renewal of TPDES Permit No. WQ0003905000, which authorizes the discharge of utility wastewaters and storm water on an intermittent and flow variable basis via Outfall 001, and the discharge of storm water runoff on an intermittent and flow variable basis via Outfall 002. The facility is located one mile northwest of the intersection of Farm-to-Market Road 608 and Farm-to-Market Road 1170, approximately 0.7 miles northwest of the City of Maryneal, Nolan County, Texas.

HALLIBURTON ENERGY SERVICES INC. which operates the Northbelt Facility, a multi-building complex that includes administrative offices; a training center; cafeteria; several after-market service repair centers; analytical, product testing and research and development laboratories; and manufacturing and assembly operations for oil and gas field industry, has applied for a renewal of TPDES Permit No. WQ0004624000, which authorizes the discharge of treated domestic wastewater, cooling tower blowdown, laboratory wash water, process wastewater, and sensor wash water at a daily average flow not to exceed 70,000 gallons per day via Outfall 001. The facility is located approximately one mile south of Bush Intercontinental Airport and one mile east of Aldine Westfield Road and 0.5 miles west of John Kennedy Boulevard, Harris County, Texas.

BELL COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 has applied for a renewal of TPDES Permit No. WQ0010351002 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 18,000,000 gallons per day. The facility is located approximately 0.75 mile north of the intersection of Farm-to-Market Road 2410 and U.S. Highway 190, adjacent to and west of Farm-to-Market Road 2410 in the City of Killeen in Bell County, Texas.

CITY OF KNOX CITY has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0010416001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 0.5 mile north of the intersection of Farm-to-Market Road 143 and State Highway 6, on the eastern bank of China Branch in Knox County, Texas.

CITY OF HEMPSTEAD has applied for a renewal of TPDES Permit No. WQ0010948001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located at the intersection of 23rd Street and Hamilton Street, approximately 1.5 miles southwest of the intersection of U.S. Highway 290 and State Highways 6 and 159 in Waller County, Texas.

BELL COUNTY WATER CONTROL AND IMPROVEMENT has applied for a renewal of TPDES Permit No. WQ0011091001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The facility is located immediately east of the Missouri-Kansas-Texas Railroad, approximately 2000 feet south of Farm-to-Market Road 436 in Bell County, Texas.

SPECIAL CAMPS FOR SPECIAL KIDS has applied for a major amendment to TPDES Permit No. WQ0013536001 to authorize the relocation of the point of discharge. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 27,500 gallons per day. The facility is located approximately six miles east of Meridian and approximately thirteen miles north of Clifton in Bosque County, Texas.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE has applied for a renewal of TPDES Permit No. WQ0013743001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located within the Texas Department of Criminal Justice Pack Unit property, approximately 2,400 feet west-southwest of the intersection of the prison service road with Farm-to-Market Road 1227, approximately 3.5 miles south of the City of Navasota in Grimes County, Texas.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 131 has applied for a renewal of TPDES Permit No. WQ0014197001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 480,000 gallons per day. The facility is located at 236 Kestrel Lane, approximately 3.5 miles south of the intersection of State Highway 6 and Farm-to-Market Road 521, in Rosharon, in Fort Bend County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200901486

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 21, 2009



## Notice of Water Quality Applications

The following notices were issued during the period of April 9, 2009 through April 16, 2009.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

## INFORMATION SECTION

LUMINANT GENERATION COMPANY, LLC which operates the Morgan Creek Steam Electric Station, has applied for a major amendment to TPDES Permit No. WQ0000554000 to request the removal of Total Aluminum limitations and requirements at Outfall 001 based site specific data; and the addition of a new waste streams via Outfall 002. The current permit authorizes the discharge of once through cooling water at a daily average flow not to exceed 360,000,000 gallons per day via Outfall 001; once through cooling water and previously monitored effluents (Outfall 102) at a daily average flow not to exceed

720,000,000 gallons per day via Outfall 002. The facility is located at 3177 State Highway 163, on the east shore of the Lake Colorado City on State Highway 163, approximately five miles southwest of the City of Colorado City, Mitchell County, Texas.

EXTEX LAPORTE LIMITED PARTNERSHIP which operates the Mountain Creek Steam Electric Station, a steam electric power generating facility, has applied for a renewal of TPDES Permit No. WQ0001250000, which authorizes the discharge of once-through cooling water and previously monitored effluent (low volume wastes and storm water) at a daily average flow not to exceed 927,000,000 gallons per day via Outfall 001; low volume waste and storm water runoff (from yard drains and diked oil storage areas) on a flow variable basis via Outfall 002; and storm water from the diked oil storage area on an intermittent and flow variable basis via Outfall 003. The facility is located at 2233-A, Mountain Creek Parkway in the City of Dallas, Dallas County, Texas.

TRADINGHOUSE POWER COMPANY LLC AND LUMINANT GENERATION COMPANY LLC which operates the Tradinghouse Creek Steam Electric Station, have applied for a renewal of TPDES Permit No. WQ0001267000, which authorizes the discharge of once-through cooling water and previously monitored effluent (low volume wastes, storm water and metal cleaning wastes) at a daily average flow not to exceed 1,056,000,000 gallons per day via Outfall 001; and storm water runoff from diked storage areas on an intermittent and flow variable basis via Outfall 002. The facility is located at 1868 Lake Felton Parkway, adjacent to Farm-to-Market Road 2957, approximately 11.5 miles east of the City of Waco, McLennan County, Texas.

SOUTHWESTERN ELECTRIC POWER COMPANY which operates the AEP Wilkes Power Plant, a steam electric power generating facility, has applied for a renewal of TPDES Permit No. WQ0001331000, which authorizes the discharge of cooling pond water on an intermittent and flow variable basis via Outfall 001, once-through cooling water at a daily average flow not to exceed 550,000,000 gallons per day via Outfall 002, low volume waste sources on a flow variable basis via Outfall 101, and metal cleaning wastes on a flow variable basis via Outfall 003. The facility is located adjacent to Johnson Creek Reservoir, approximately three miles northwest of the intersection of State Highway 49 and State Highway 1969, approximately five miles south of the City of Avinger, Marion County, Texas.

ARKEMA INC. which operates a remediation site that includes a former agriculture chemicals formulating plant and Finfeather Lake, has applied for a renewal of TPDES Permit No. WQ0001393000, which authorizes the discharge of storm water associated with industrial activity on an intermittent and flow variable basis via Outfalls 001, 003, and 004. The facility is located at 201 West Dodge Street in Bryan, Brazos County, Texas.

DECORDOVA POWER COMPANY LLC AND LUMINANT GENERATION COMPANY LLC which operates the DeCordova Steam Electric Station, have applied for a renewal of TPDES Permit No. WQ0001481000, which authorizes the discharge of once-through cooling water and perviously monitored effluents (low volume wastes, storm water runoff ((yard drains and diked oil storage area), metal cleaning wastes) at a daily average flow not to exceed 1,041,480,000 gallons per day via Outfall 001. The facility is located on the southwest shore of Lake Grandbury along County Road 312, approximately seven miles southeast of the intersection of U.S. Highway 377 and State Highway 144 in the City of Grandbury, Hood County, Texas.

LONE STAR GROWERS, L.P. which operates the Waco Greenhouse Complex, has applied for a renewal of TPDES Permit No. WQ0002663000, which authorizes the discharge of irrigation water at

a daily average flow not to exceed 30,000 gallons per day via Outfall 001. The facility is located at 2901 12th Street, approximately 3 miles south of the intersection of Interstate Highway 35 and State Highway 6 in the City of Waco, McLennan County, Texas.

HANSON PIPE & PRECAST, INC. which operates a plant that manufactures concrete pressure pipe, has applied for a renewal of TPDES Permit No. WQ0003622000, which authorizes the discharge of treated process wastewater, utility wastewater, hydrostatic test water, and storm water runoff on a flow variable basis via Outfall 001. The facility is located at 1624 Marshall Street at the intersection of Interstate Highway 27 and Loop 289 in the City of Lubbock, Lubbock County, Texas.

LLANO ESTACADO WINERY, INC. which operates a vineyard and winery, has applied for a renewal of Permit No. WQ0003963000, which authorizes the disposal of winery wastewater from crushing/settling operations, equipment washdown, floor wash water, and bottle sterilization at an annual maximum flow of 2,000,000 gallons per year via irrigation of 3.6 acres of natural grasses and Rye. This permit will not authorize a discharge of pollutants into water in the State. The facility and disposal site are located adjacent to Farm-to-Market (FM) Road 1585, approximately three miles east of the intersection of FM 1585 and U.S. Highway 87, near the City of Lubbock, Lubbock County, Texas.

TENASKA FRONTIER PARTNERS, LTD. which operates Tenaska Frontier Generating Station, a natural gas-fired electrical generation station, has applied for a renewal of TPDES Permit No. WQ0003996000, which authorizes the discharge of cooling tower blowdown, boiler blowdown, reverse osmosis reject water, water treatment filter backwash, low volume waste sources, metal cleaning wastes, chemical cleaning wastes, hydrostatic test waters, water from flushing of tanks, piping and other equipment, and storm water at a daily average flow not to exceed 2,500,000 gallons per day via Outfall 001. The facility is located on the south side of Highway 30 approximately two miles southwest of the City of Shiro, Grimes County, Texas.

CITY OF SEYMOUR which operates the City of Seymour Water Treatment Plant, has applied for a renewal of TPDES Permit No. WQ0004004000, which authorizes the discharge of reverse osmosis reject water at a daily average flow not to exceed 200,000 gallons per day via Outfall 001. The facility is located on the west bank of Plants Creek approximately 2,700 feet north of the intersection of West Custer Street and East California Street (U.S. Highway 82), northwest of the City of Seymour, Baylor County, Texas.

LUMINANT MINING COMPANY LLC which operates the Monticello-Leesburg Lignite Mining Area, a surface lignite mining facility, has applied for a renewal of TPDES Permit No. WQ0004681000, which authorizes the discharge of surface water runoff from active mining areas, ground water seepage, and dewatering well water on an intermittent and flow variable basis via Outfall 001 and post-mining area runoff and previously monitored effluent from post mining sedimentation ponds on an intermittent and flow variable basis via Outfall 101. The facility is located 1.5 miles east of Leesburg, southeast of the intersection of the Kansas City Southern Railroad and County Road 3106, Camp County, Texas.

CITY OF VERNON which proposes to operate Vernon Nitrate Treatment Plant, an ion exchange water treatment plant, has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004868000, to authorize the discharge of ion exchange water treatment system waste at a daily average flow not to exceed 46,000 gallons per day via Outfall 001. The facility is located

at 2801 Sullivan Street, approximately one mile east of the intersection of U.S. Highway 70 and U.S. Highway 287 in Wilbarger County, Texas.

CITY OF COPPERAS COVE has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0010045003, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The facility is located 0.2 mile east of Farm-to-Market Road 3046 and 2,500 feet south of the intersection of Farm-to-Market Road 3046 and Farm-to-Market Road 116, and approximately 1.5 miles south of the City of Copperas Cove in Coryell County, Texas.

CITY OF BOERNE has applied for a new permit, proposed TPDES Permit No. WQ0010066002, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 1,400,000 gallons per day. The facility will be located approximately 1.82 miles southeast of the intersection of Interstate Highway 10 (I-10) and State Highway 46 in Boerne Texas in Kendall County, Texas.

CITY OF SCHULENBURG has applied for a renewal of TPDES Permit No. WQ0010115001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 460,000 gallons per day. The facility is located in the 800 block of Kallus Street near its intersection with Hillje Street in the City of Schulenburg in Fayette County, Texas.

CITY OF GATESVILLE has applied for a renewal of TPDES Permit No. WQ0010176002 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,200,000 gallons per day. The facility is located on Stillhouse Branch, 1,200 feet west of the point where State Highway 36 crosses Stillhouse Branch in Coryell County, Texas.

CITY OF SEYMOUR has applied for a renewal of TPDES Permit No. WQ0010281001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 537,000 gallons per day. TCEQ received this application on October 27, 2008. The facility is located approximately 0.5 mile southwest of the intersection of Farm-to-Market Road 1286 and State Highway 199 in Baylor County, Texas.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a renewal of Permit No. 11220-001, which authorizes the disposal of treated domestic wastewater at an annual average flow not to exceed 7,311 gallons per day via surface irrigation of 3 acres of public access pasture land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located in Cleburne State Park, approximately 300 feet from the north shore of Cedar Lake in Cleburne State Park and approximately 7,500 feet north-northwest of the junction of Park Road 21 and Farm-to-Market Road 1434 in Johnson County, Texas.

TEXAS DEPARTMENT OF TRANSPORTATION has applied for a renewal of TPDES Permit No. WQ0011311001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located on the northwest side of Interstate Highway 20 at a point approximately 0.25 mile west of the Parker County Line in Palo Pinto County, Texas.

THE LOWER COLORADO RIVER AUTHORITY AND THE BRAZOS RIVER AUTHORITY have applied for a renewal of TPDES Permit No. WQ0011324001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,700,000 gallons per day. The facility is located 1,300 feet east of Farm-to-Market Road 1660 and 1,500 feet south of State Highway 79 in the City of Hutto, in Williamson County, Texas.

DRIPPING SPRINGS INDEPENDENT SCHOOL DISTRICT has applied for a major amendment to Permit No. WQ0013748001, to autho-

rize an increase in the daily average flow from 15,000 gallons per day to 50,000 gallons per day and to increase the corresponding subsurface drip irrigation disposal site from 150,000 square feet of non-public access land to 500,000 square feet of public access land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located at 940 U.S. Highway 290 West, Dripping Springs, Texas, approximately 0.9 mile northwest of the intersection of Ranch Road 12 and U.S. Highway 290 in Hays County, Texas.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 133 has applied for a renewal of TPDES Permit No. WQ0014514001 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,360,000 gallons per day. TCEQ received this application on November 21, 2008. The facility is located at 23527 1/2 Bellaire Boulevard, approximately 3,300 feet southwest of the intersection of Canal Road and Bellaire Boulevard and approximately 6,000 feet southwest of the intersection of Farm-to-Market Road 1093 and Canal Road in Fort Bend County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.TCEQ.state.tx.us](http://www.TCEQ.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200901522

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 22, 2009

## Office of the Governor

Request for Grant Applications for the American Recovery and Reinvestment Act of 2009: Edward Byrne Memorial Justice Assistance Formula Grant Program

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for projects that reduce crime and improve the efficiency and effectiveness of the criminal justice system.

Purpose: This solicitation supports the Recovery Act through initiatives that reduce crime and its effect on communities.

Available Funding: Federal funds are authorized under the American Recovery and Reinvestment Act of 2009 (Public Law 111-5). Funds will be managed in accordance with federal guidelines for the Justice Assistance Formula Grant (JAG) program. Up to \$40 million will be available under this solicitation to support local criminal justice projects.

This solicitation is being issued in accordance with federal guidance as of April 15, 2009. Applicants are advised that additional federal guidance could become available and could affect information requested, timelines, reporting requirements, certifications, and other matters related to this Request for Grant Applications (RFA).

Funding Levels:

Minimum grant award - \$10,000.

Maximum grant award - Units of local government are limited to no more than the total amount of local funds expended on criminal justice services in the entity's previous fiscal year. Criminal justice services are defined as the total amount the unit of government spent in local funds for law enforcement, corrections and judicial services during the previous fiscal year.

Match Requirement: None

Standards: Grantees must comply with the accountability and transparency requirements of the Recovery Act and all applicable statutes, requirements, and guidelines cited in the *Texas Administrative Code* (1 TAC Chapter 3).

Prohibitions: Grant funds may not be used to support the following services, activities, and costs:

- (1) proselytizing or sectarian worship;
- (2) lobbying;
- (3) any portion of the salary of, or any other compensation for, an elected or appointed government official;
- (4) vehicles or equipment for government agencies that are for general agency use;
- (5) weapons, ammunition, tasers, explosives or military vehicles;
- (6) admission fees or tickets to any amusement park, recreational activity or sporting event;
- (7) promotional gifts;
- (8) food, meals, beverages, or other refreshments unless the expense is for a working event where full participation by participants mandates the provision of food and beverages and the event is not related to amusement and/or social activities in any way;
- (9) membership dues for individuals;
- (10) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state or local funds (i.e., supplanting);
- (11) fundraising;
- (12) construction;
- (13) medical services;
- (14) transportation, lodging, per diem or any related costs for participants, when grant funds are used to develop and conduct training;
- (15) real estate;
- (16) vessels (excluding police boats);
- (17) aircraft (excluding police helicopters);
- (18) luxury items;
- (19) casinos or gambling establishments;
- (20) aquariums;
- (21) zoos;
- (22) golf courses; and
- (23) swimming pools.

Eligible Applicants:

- (1) Units of local government;
- (2) General purpose political subdivisions; and
- (3) Law enforcement or judicial enforcement districts established under applicable state law with the independent authority to establish a budget and impose taxes.

Eligibility Requirements:

- (1) Eligible applicants are limited to one application;

(2) Units of local government providing law enforcement services must be current on reporting Part I violent crime data to the Texas Department of Public Safety for inclusion in the annual Uniform Crime Report (UCR) and have been current in reporting UCR data for the three preceding years;

(3) Units of local government that were eligible for grant funds under the Recovery Act: Edward Byrne Memorial Justice Assistance Formula Grant Program: Local Solicitation must have submitted an application for those funds to be eligible for consideration under this solicitation;

(4) Units of local government must have a Data Universal Numbering System (DUNS) number assigned to its agency <http://fedgov.dnb.com/webform/displayHomePage.do>;

(5) Units of local government must be registered in the federal Central Contractor Registration (CCR) database <http://www.ccr.gov>;

(6) Units of local government are encouraged to develop comprehensive applications that promote contracting with §501(c)(3) non-profits to support the delivery of services to crime victims and projects that promote crime prevention; and

(7) Units of local government that contract for or provide juvenile services must address one of the following priorities identified by the Juvenile Justice Advisory Board:

- (a) gang prevention;
- (b) early intervention at first offense;
- (c) specialized treatment services;
- (d) disproportionate minority contact; and
- (e) juvenile justice system impact.

Eligible Activities:

(1) Criminal justice services to individuals or communities. Examples include coordinated initiatives, substance abuse treatment, prosecution, victim services, and reentry.

(2) Improvements to the efficiency and effectiveness of the criminal justice system. Examples include grant-funded personnel, overtime, law enforcement training, equipment, technology, crime prevention, diversion programs, and reductions in backlogs.

Project Period: Grant-funded projects must begin on or after October 1, 2009, and expire on or before September 30, 2010.

Application Process: Applicants can access CJD's eGrants website at <https://cjdonline.governor.state.tx.us> to register and apply for funding.

Preferences: Preference will be given to applicants who demonstrate cost effective programs focused on a comprehensive and effective approach to reducing crime while providing a strong plan for sustaining any positions proposed for funding.

Closing Date for Receipt of Applications: All applications must be certified via CJD's eGrants website on or before June 1, 2009.

Selection Process:

(1) Applications will be forwarded by CJD to the appropriate regional council of governments (COG).

(2) The COG's criminal justice advisory committee prioritizes all eligible applications based on identified community and/or comprehensive planning, cost and program effectiveness.

(3) CJD will accept priority listings that are approved by the COG's executive committee.

(4) CJD will make all final funding decisions based on COG priorities, reasonableness, availability of funding, and cost-effectiveness.

Contact Person: If additional information is needed, contact the criminal justice planner for the applicant's council of governments region or Judy Switzer at [jswitzer@governor.state.tx.us](mailto:jswitzer@governor.state.tx.us) or (512) 463-1919.

TRD-200901523

Kevin Green

Assistant General Counsel

Office of the Governor

Filed: April 22, 2009

## Texas Health and Human Services Commission

### Notice of Award of a Major Consulting Contract

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the award of contract #529-09-0084-00001 to **The Paciello Group, LLC**, an entity with a principal place of business **88 Temple Street; Nashua, New Hampshire 03060**. The contractor will review, replicate, and report on the plaintiff's expert testimony regarding inaccessibility of the Access HR system application as detailed in the proposal and provide expert testimony at deposition and/or trial.

The total value of the contract with The Paciello Group, LLC will not exceed \$21,000.00. The contract was executed on April 16, 2009 and will expire on August 31, 2009, unless extended or terminated sooner by the parties. The Paciello Group, LLC will produce numerous documents and reports during the term of the contract, with the final reporting due by May 15, 2009.

TRD-200901464

Shelly Gray

Assistant General Counsel

Texas Health and Human Services Commission

Filed: April 16, 2009

### Notification of Consulting Procurement

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the release of its **Request for Proposals (RFP) Number 529-09-0062 Independent Verification and Validation for Medicaid Eligibility and Health Information (EHI) Services**. HHSC seeks a consultant to provide assistance by and through independent verification and validation technologies, techniques and methodologies associated with the Medicaid EHI Services project.

The primary objectives for this procurement are to assist HHSC in administering the Medicaid EHI Services contract by:

- \* Assuring the accurate, complete and timely delivery of services;
- \* Monitoring and reporting on the Medicaid EHI Services vendor performance, specifically related to quality, risk management and issues resolution;
- \* Exploring opportunities to maximize efficiency and reduce costs in the administration of the affected State programs;
- \* Offering recommendations and possible alternatives to HHSC for the Vendor to achieve the goals and objectives of the Medicaid EHI project; and
- \* Strategic planning support.

The RFP is located in full on HHSC's Business Opportunities Page under **Business Opportunities** link at [http://www.hhsc.state.tx.us/about\\_hhsc/BusOpp/BO\\_opportunities.html](http://www.hhsc.state.tx.us/about_hhsc/BusOpp/BO_opportunities.html). HHSC also posted notice of the procurement on the Texas Marketplace on April 3, 2009.

Health and Human Services Commission's Sole Point-of-Contact for Procurement

**Thomas Spears**

**Contract Administrator**

**Texas Health and Human Services Commission**

**Enterprise Contracts and Procurement Services Department**

**4405 North Lamar Blvd.**

**Austin, Texas 78756-3422**

**(512) 206-5416**

**[thomas.spears@hhsc.state.tx.us](mailto:thomas.spears@hhsc.state.tx.us)**

All questions regarding the RFP must be sent in writing to the above-referenced contact by 3:00 p.m. Central Time on April 22, 2009. HHSC will post all written questions received with HHSC's responses on its website on April 30, 2009 or as they become available. All proposals must be received at the above-referenced address on or before 3:00 p.m. Central Time on May 14, 2009. Proposals received after this time and date will not be considered.

HHSC will hold a Vendor Conference on April 21, 2009 from 1:00 to 5:00 p.m. Central Time in the Lone Star Conference Room located at 11209 Metric Boulevard, Austin, Texas.

All proposals will be subject to evaluation based on the criteria and procedures set forth in the RFP. HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice. HHSC will not pay for costs incurred by any entity in responding to this RFP.

TRD-200901463

David Brown

Assistant General Counsel

Texas Health and Human Services Commission

Filed: April 16, 2009

### Public Notice

The Texas Health and Human Services Commission (HHSC) intends to submit to the Centers for Medicare and Medicaid Services a request to renew the Consolidated Waiver Program (CWP) 0373. The CWP 0373 is a Medicaid home and community based service waiver authorized under the authority of Title XIX, Section 1915(c) of the Social Security Act. The current waiver will expire August 31, 2009. The proposed effective date for the renewal is September 1, 2009.

The CWP is a pilot program authorized by Texas Government Code §531.0219 for the purpose of testing the feasibility of combining five of the state's §1915(c) Medicaid waiver programs, including Community Based Alternatives; Community Living Assistance and Support Services; Medically Dependent Children Program; Home and Community-based Services; and the Deaf Blind with Multiple Disabilities program. CWP is comprised of two §1915(c) Medicaid waivers, 0373 and 0374. The CWP 0373 waiver program provides home and community-based services to adults and children who are eligible for nursing facility care. The pilot program is limited to serving 200 individuals in Bexar County.

Services include adaptive aids, medical supplies, minor home modifications, adult foster care, assisted living, 24-hour residential care, personal assistance services, residential habilitation, day habilitation, in-and out-of-home respite, nursing, audiology, child-support services, independent advocacy, intervener; orientation and mobility, behavioral support, social work, physical, occupational, and speech/language therapies, dental, dietary, emergency response, family surrogate services, home-delivered meals, and transportation. The major changes since the last renewal are 1) the change in rate methodology (from the Texas Index of Level of Effort to federal Resource Utilization Groups) and 2) the implementation of the new cost ceilings of 200 percent of the annual institutional costs. These two changes have been incorporated into the waivers through recent waiver amendments. In addition, Consumer Directed Services is being added as a service delivery option with this renewal request.

HHSC is requesting that the waiver renewal be approved for an additional five-year period beginning September 1, 2009, and extending through August 31, 2014. The waiver maintains cost neutrality for waiver years 2009 through 2014. The CWP 0374 pilot waiver program, which provides home and community-based services to adults and children who are eligible for care in an Intermediate Care Facility for persons with Mental Retardation or Related Conditions (ICF-MR/RC), is simultaneously being submitted for renewal.

To obtain copies of the proposed waiver, interested parties may contact Christine Longoria by mail at Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-620, Austin, Texas 78708-5200, telephone (512) 491-1152, fax (512) 491-1953, or by e-mail [christine.longoria@hhsc.state.tx.us](mailto:christine.longoria@hhsc.state.tx.us).

TRD-200901448

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: April 16, 2009



## Public Notice

The Texas Health and Human Services Commission (HHSC) intends to submit to the Centers for Medicare and Medicaid Services a request to renew the Consolidated Waiver Program (CWP) 0374. The CWP 0374 is a Medicaid home and community based service waiver authorized under the authority of Title XIX, Section 1915(c), of the Social Security Act. The current waiver will expire August 31, 2009. The proposed effective date for the renewal is September 1, 2009.

The CWP is a pilot program authorized by Texas Government Code §531.0219 for the purpose of testing the feasibility of combining five of the state's §1915(c) Medicaid waiver programs, including Community Based Alternatives; Community Living Assistance and Support

Services; Medically Dependent Children Program; Home and Community-based Services; and the Deaf Blind with Multiple Disabilities program. CWP is comprised of two §1915(c) Medicaid waivers, 0374 and 0373. The CWP 0374 waiver program provides home and community-based services to adults and children who meet the criteria for institutional care in an Intermediate Care Facility for persons with Mental Retardation or Related Conditions (ICF-MR/RC). The pilot program is limited to serving 200 individuals in Bexar County.

Services include adaptive aids, medical supplies, minor home modifications, adult foster care, assisted living, 24-hour residential care, personal assistance services, residential habilitation, day habilitation, in and out-of-home respite, nursing, audiology, child-support services, independent advocacy, intervener, orientation and mobility, behavioral support, social work, physical, occupational, and speech/language therapies, dental, dietary, emergency response, family surrogate services, home-delivered meals, and transportation. The major change since the last renewal is the implementation of the new cost ceiling of 200 percent of the annual institutional costs. This change has been incorporated into the waiver through a recent waiver amendment. In addition, Consumer Directed Services is being added as a service delivery option with this renewal request.

HHSC is requesting that the waiver renewal be approved for an additional five year period beginning September 1, 2009, and extending through August 31, 2014. The waiver maintains cost neutrality for waiver years 2009 through 2014. The CWP 0373 pilot waiver program, which provides home and community-based services to adults and children who are eligible for nursing facility care, is simultaneously being submitted for renewal.

To obtain copies of the proposed waiver, interested parties may contact Christine Longoria by mail at Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-620, Austin, Texas 78708-5200, telephone (512) 491-1152, fax (512) 491-1953, or by e-mail [christine.longoria@hhsc.state.tx.us](mailto:christine.longoria@hhsc.state.tx.us).

TRD-200901447

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: April 16, 2009



## Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
El Paso	Southwest Cardiovascular Intervention Clinic P.A.	L06320	El Paso	00	04/13/09
Spring	Advanced Inspection Technologies	L06228	Spring	00	04/01/09
Sugar Land	Methodist Sugar Land Hospital Cancer Center	L06232	Sugar Land	00	04/08/09
Throughout Tx	Spectral Oil and Gas Corporation	L06231	The Woodlands	00	04/02/09

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Abilene	Hendrick Medical Center	L02433	Abilene	98	04/10/09
Amarillo	Amarillo Medical Specialist L.L.P.	L05525	Amarillo	08	04/08/09
Amarillo	The Don and Sybil Harrington Cancer Center	L03053	Amarillo	44	03/31/09
Angleton	Isotherapeutics Group L.L.C.	L05969	Angleton	11	04/10/09
Arlington	Dallas Cardiology Associates P.A. dba Heartplace of Arlington	L05855	Arlington	04	04/01/09
Arlington	Texas Oncology P.A. dba Texas Cancer Center Arlington	L05116	Arlington	20	04/01/09
Austin	Seton Healthcare dba Seton Medical Center Williamson	L06128	Austin	07	04/01/09
Austin	Seton Healthcare dba Dell Children's Medical Center of Central Texas	L06065	Austin	11	04/01/09
Austin	Capital Cardiovascular Consultants	L05590	Austin	15	04/09/09
Austin	Seton Healthcare dba Seton Medical Center Austin	L02896	Austin	102	04/01/09
Carrollton	Alpha Energy Laboratories Inc.	L02814	Carrollton	17	04/15/09
Channelview	Arctic Pipe Inspection	L05210	Channelview	04	04/13/09
Cleveland	Cleveland Regional Medical Center L.P.	L02055	Cleveland	40	03/24/09
Corpus Christi	Samuel Duro Oloyo, M.D. dba South Texas Medical Associates	L05881	Corpus Christi	02	04/08/09
Corpus Christi	Riverside Hospital Inc. dba Northwest Regional Hospital	L02977	Corpus Christi	43	03/31/09
Corpus Christi	Radiology Associates L.L.P.	L04169	Corpus Christi	49	04/09/09
Corpus Christi	The Corpus Christi Medical Center Bay Area	L04723	Corpus Christi	50	03/31/09
Dallas	Baylor Radiosurgery Center dba Baylor University Medical Center	L05842	Dallas	11	04/08/09
Dallas	Cooper Medical Imaging L.L.P.	L05138	Dallas	12	03/31/09
Dallas	Dallas Cardiology Associates P.A. dba Heartplace East	L04607	Dallas	54	04/03/09
Dallas	Mallinckrodt Inc.	L03580	Dallas	62	03/30/09
Dallas	Cardinal Health	L05610	Dallas	13	04/14/09
Denton	Trace Life Sciences Inc.	L05435	Denton	22	04/10/09
Fort Worth	Texas Health Harris Methodist Hospital of Fort Worth	L01837	Fort Worth	116	03/31/09
Fort Worth	Texas Health Harris Methodist Hospital of Fort Worth	L01837	Fort Worth	117	04/06/09
Houston	Memorial Hermann Hospital System dba River Oaks Imaging and Diagnostic	L06181	Houston	04	04/01/09
Houston	Doctors Hospital 1997 L.P. dba Doctors Hospital Parkway/Tidwell	L01964	Houston	51	04/09/09



AMENDMENTS TO EXISTING LICENSES ISSUED (Continued):

Location	Name	License #	City	Amendment #	Date of Action
Houston	Medi Physics Inc. dba G.E. Healthcare	L05517	Houston	17	04/09/09
Houston	Methodist Health Centers dba Methodist Willowbrook Hospital	L05472	Houston	28	04/08/09
Houston	Heart Care Center of Northwest Houston	L05539	Houston	10	04/07/09
Houston	Saint-Gobain Ceramics and Plastics	L04895	Houston	11	04/13/09
Irving	Columbia Medical Center of Las Colinas Inc. dba Las Colinas Medical Center	L05084	Irving	16	04/02/09
Lubbock	University Medical Center	L04719	Lubbock	105	04/10/09
Orange	Miguel Castellanos, M.D. P.A.	L06184	Orange	01	03/31/09
Paris	Essent PRMC L.P. dba Paris Regional Medical Center	L03199	Paris	47	03/30/09
Plano	Medical Edge Healthcare Group P.A. dba Heart First	L05555	Plano	24	04/03/09
San Antonio	Sioco Cardiology P.A.	L05662	San Antonio	04	04/09/09
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	175	04/10/09
San Antonio	Hector R. Villaseñor, M.D. P.A. dba Heart Institute of South Texas	L04377	San Antonio	025	04/09/09
San Antonio	Texas Cancer Clinic	L05786	San Antonio	13	04/13/09
Sugarland	Methodist Sugarland Hospital	L05788	Sugarland	15	03/30/09
Sulphur Springs	Medical Surgical Clinic of Sulphur Springs dba Sulphur Springs Family Health Care Assoc.	L05701	Sulphur Springs	13	04/08/09
Temple	Texas A&M University System Health Science Center	L05494	Temple	12	03/30/09
Throughout Tx	Eagle NDT L.L.C.	L06176	Abilene	09	04/03/09
Throughout Tx	Team Industrial Services Inc.	L00087	Alvin	203	04/06/09
Throughout Tx	Weld Spec Inc.	L05426	Beaumont	83	04/09/09
Throughout Tx	Fugro Consultants L.P.	L01474	Corpus Christi	32	03/27/09
Throughout Tx	Alliance Engineering and Testing Services Inc.	L05889	Fort Worth	05	04/14/09
Throughout Tx	French Engineering Inc.	L04572	Houston	08	04/14/09
Throughout Tx	HVJ Associates Inc.	L03813	Houston	37	04/13/09
Throughout Tx	South Texas Testing Laboratories Inc.	L05190	Laredo	04	03/30/09
Throughout Tx	Lubbock Labs	L01558	Lubbock	15	04/13/09
Throughout Tx	Big State X-Ray	L02693	Odessa	75	04/13/09
Throughout Tx	United Surveys Inc.	L01570	Rosenberg	24	04/13/09
Throughout Tx	Schlumberger Technology Corporation	L00764	Sugarland	110	04/10/09
Tyler	Carter Bloodcare	L04826	Tyler	13	03/30/09
Tyler	Trinity Mother Frances Health System	L01670	Tyler	144	03/27/09
Tyler	Delek Refining L.T.D.	L02289	Tyler	20	04/08/09
Victoria	TSI Laboratories Inc.	L04767	Victoria	11	04/13/09
Wichita Falls	Kell West Regional Hospital L.L.C.	L05943	Wichita Falls	07	03/30/09

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Beaumont	Exxonmobil Oil Corporation	L00603	Beaumont	89	04/01/09
Corpus Christi	Radiology Associates L.L.P.	L04169	Corpus Christi	50	04/10/09
Houston	Gulf Coast MRI and Diagnostic	L05333	Houston	14	04/10/09
McAllen	Valley Heart Consultants	L05330	McAllen	11	04/03/09
Pasadena	MEMC Pasadena Inc.	L05129	Pasadena	12	04/06/09
Temple	Kings Daughters Hospital	L00666	Temple	50	04/10/09
Throughout Tx	Fargo Consultants Inc.	L05300	Dallas	10	03/30/09
Throughout Tx	Peachtree Construction Company	L05401	Fort Worth	10	04/01/09
Waco	Hillcrest Baptist Medical Center	L00845	Waco	87	04/06/09

## TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Corpus Christi	Riverside Hospital Inc. dba Northwest Regional Hospital	L02977	Corpus Christi	44	04/01/09

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289, regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - MC 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-200901515  
Lisa Hernandez  
General Counsel  
Department of State Health Services  
Filed: April 22, 2009

ter publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200901518  
Brenda Caldwell  
Chief Clerk and General Counsel  
Texas Department of Insurance  
Filed: April 22, 2009

## Houston-Galveston Area Council

### Request for Quotes

The Houston-Galveston Area Council (H-GAC) is issuing a Request for Quotes (RFQ) for a Portable Kiosk Job Matching System. This System must be capable of matching job seekers' skills/experience with employer job orders within a customized database. Bids would be based on a per Kiosk basis with an estimated 14 in the 13 county Gulf Coast region.

Quotes may be submitted to H-GAC, Human Services-Workforce, P.O. Box 22777, Houston, Texas 77227-2777, by calling Carol Kimmick at (713) 627-3200 or email carol.kimmick@hgac.com. Quotes are due at the H-GAC offices, 3555 Timmons Lane, Suite 120, Houston, Texas 77027 no later than 12:00 p.m. (noon) Central Standard Time on Tuesday, May 5, 2009. Late quotes will not be accepted. There will be no exceptions.

TRD-200901485  
Jack Steele  
Executive Director  
Houston-Galveston Area Council  
Filed: April 20, 2009

## Texas Department of Insurance

### Company Licensing

Application for admission to the State of Texas by MUNICIPAL AND INFRASTRUCTURE ASSURANCE CORPORATION, a foreign fire and casualty company. The home office is in New York, New York.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Regis-*

## Public Utility Commission of Texas

### Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on April 17, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of GTE Southwest Incorporated d/b/a Verizon Southwest for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 36923 before the Public Utility Commission of Texas.

The requested CFA expanded service area footprint includes the city of The Colony, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 36923.

TRD-200901516  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 22, 2009

### Notice of Amended Application for Waiver Requirements

Notice is given to the public of an amended application filed on April 13, 2009 with the Public Utility Commission of Texas for waiver from the requirements in P.U.C. Substantive Rule §26.420(f)(3)(B).

Docket Style and Number: Application of Flat Wireless, LLC for Waiver to Apply Safe-Harbor Percentage to Calculate Texas Universal Service Fund (TUSF) Assessment Pursuant to P.U.C. Substantive Rule §26.420(f). Docket Number 36725.

The Application: Flat Wireless is a Commercial Mobile Radio Service (CMRS) provider. Flat Wireless states that it has elected to use the safe-harbor percentage approved by the commission for its classification of telecommunications service provided. Flat Wireless requests that the commission grant it a permanent waiver from the requirements contained in P.U.C. Substantive Rule §26.420(f)(3)(A) to allow Flat Wireless to use the commission-ordered safe-harbor TUSF assessment methodology to calculate TUSF assessments.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by May 13, 2009, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 36725.

TRD-200901480  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 20, 2009



#### Notice of Application for Determination of Hurricane Restoration Costs

Notice is given to the public of a Public Utility Commission of Texas (commission) an application for determination of hurricane restoration costs pursuant to the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.001 and Senate Bill 769.

Docket Style and Number: Application of CenterPoint Houston Electric, LLC for Determination of Hurricane Restoration Costs, Docket Number 36918.

The Application: On April 17, 2009, CenterPoint Energy Houston Electric, LLC (CenterPoint) filed an application for determination that its Hurricane Ike system restoration costs of \$677,816,820 were reasonable and necessary to allow CenterPoint to restore electric service to its customers. Specifically, CenterPoint requests a commission determination (1) designating the amount of its Hurricane Ike related system restoration costs as eligible for recovery; (2) authorizing CenterPoint to recover carrying charges on the cost of the system restoration from the date costs were incurred at CenterPoint's pre-tax weighted average cost of capital, as authorized by the commission in Docket Number 22355, *Application of Reliant Energy for Approval of Unbundled Cost of Service Rate Pursuant to PURA §39.201 and Public Utility Commission Substantive Rule §25.344* and (3) approving the manner in which Hurricane Ike system restoration costs will be functionalized and allocated. CenterPoint's application included witness testimonies in support of its application, a proposed protective order, and proposed notice.

The Commission has jurisdiction over this application pursuant to the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.001 and Senate Bill 769 (SB 769). SB 769 was passed by the Texas Legislature on April 7, 2009, and signed the Governor. The purpose of SB 769 is to enable an electric utility to timely recover system restoration costs after a hurricane or similar natural disaster and to use securitization financ-

ing to recover the distribution-related costs and the Electric Reliability Council of Texas, Inc. Transmission Cost of Service mechanism to recover the transmission-related costs. SB 769 establishes a 150-day period to process this application. Accordingly, the 150-day period for this proceeding ends **September 14, 2009**.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 36918.

TRD-200901484  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 20, 2009



#### Notice of Application for Sale, Transfer or Merger

Notice is given to the public of a joint application for sale, transfer, or merger filed with the Public Utility Commission of Texas (commission) on April 17, 2009, pursuant to the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.101 and §37.154 (Vernon 2007) (PURA).

Docket Style and Number: Joint Application of AEP Texas North Company and LCRA Transmission Services Corporation to Transfer Certificate Rights to Facilities in Mason and Llano Counties, Docket Number 36925.

The Application: AEP Texas North Company (AEP Texas North) and the LCRA Transmission Services Corporation (LCRA TSC) filed a joint application for approval of their proposal to transfer from AEP Texas North to LCRA TSC an existing transmission line and associated certificate of convenience and necessity (CCN) rights. The proposed transfer comprises a 16.7-mile-long portion of the existing 69-kV transmission line (including easements) beginning at the hardware connections at the Fort Mason Substation and ending at the Central Texas Electric Cooperative Substation dead-end structure.

LCRA TSC is purchasing the facilities in order to provide the best alternative to the Electric Reliability Council of Texas, Inc. (ERCOT) and its customers in the upgrading of the facilities as directed by the Commission in its selection of Competitive Renewable Energy Zone (CREZ) Scenario 2. The Fort Mason-to-Pittsburg transmission line presently provides a key 69-kV path between a highly concentrated wind generation resource-rich area in Central West Texas into the load-heavy Central Texas region. In an effort to save time and project cost, LCRA TSC recommended that ERCOT consider a rebuild of the existing 69-kV transmission line between the two substations. On September 10, 2008, ERCOT agreed, and as indicated in ERCOT's CREZ Transmission Optimization study findings, the upgrade of this transmission line from 69-kV to 138-kV will assist in meeting the Commission's CREZ objective in the most cost-effective manner.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 36925.

TRD-200901483  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 20, 2009

◆ ◆ ◆  
**Notice of Application to Relinquish a Service Provider  
Certificate of Operating Authority**

On April 15, 2009, Mundo Telecom filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60738. Applicant intends to relinquish its certificate.

The Application: Application of Mundo Telecom for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 36913.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than May 6, 2009. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36913.

TRD-200901482  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 20, 2009

◆ ◆ ◆  
**Notice of Proceeding to Sequence Certificate of Convenience  
and Necessity Applications for the Priority Projects for the  
Competitive Renewable Energy Zones**

Notice is given to the public of a Public Utility Commission of Texas (commission) proceeding established to sequence certificate of convenience and necessity applications for the priority projects for the competitive renewable energy zones pursuant to the Public Utility Regulatory Act, Tex. Util. Code Ann. §§11.001 - 66.016 (Vernon 2007 & Supp. 2008) (PURA).

Docket Style and Number: Proceeding to Sequence Certificate of Convenience and Necessity Applications for the Priority Projects for the Competitive Renewable Energy Zones, Docket Number 36801.

The Application: On March 30, 2009, the commission issued its Order in *Commission Staff's Petition for Selection of Entities Responsible for Transmission Improvements Necessary to Deliver Renewable Energy From Competitive Renewable Energy Zones*, Docket Number 35665, wherein Commission Staff was directed, along with the Electric Reliability Council of Texas, Inc., LCRA Transmission Services Corporation, and Oncor Electric Delivery Company, LLC to participate in the above styled and numbered docket to sequence priority project certificate of convenience and necessity applications.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477 no later than May 15, 2009. A request to intervene should be submitted in writing by the May 15, 2009, deadline. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission

at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 36801.

TRD-200901481  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 20, 2009

◆ ◆ ◆  
**South East Texas Regional Planning Commission**

**Request for Qualifications**

Technical Assistance for Community Development Block Grant (CDBG) Based Projects and Programs

**Description:**

The South East Texas Regional Planning Commission (SETRPC) will be administering CDBG Hurricane Ike Disaster funds for Hardin, Jefferson and Orange Counties. As such, SETRPC is seeking an individual who is qualified to provide technical assistance in the development of policies, procedures, and guidelines for its multifamily program in accordance with Federal and State CDBG regulations and requirements.

**Consulting services will consist of the following tasks:**

1. Consultant will provide ongoing technical services to the SETRPC on an as-needed basis. Technical services potentially may include site visits during the term of the contract.
2. Consultant will provide training to SETRPC staff and such other persons as required.

**Minimum Qualifications:**

1. Minimum ten years verifiable experience with the CDBG program
  - a. Shown on applicant's resume
2. Minimum five years verifiable experience in underwriting and/or development of multifamily projects, including low income housing tax credit developments
  - a. Shown on applicant's resume

**Response Date:**

Please respond by Close of Business, Wednesday, May 6, 2009.

**Respond To:**

Mike Foster  
SETRPC  
2210 Eastex Freeway  
Beaumont, TX 77703  
(409) 899-8444 Ext. 7504

TRD-200901469  
Mike Foster  
Manager, Community Development Program  
South East Texas Regional Planning Commission  
Filed: April 17, 2009

◆ ◆ ◆  
**Request for Qualifications**

Underwriter for Community Development Block Grant (CDBG) Based Projects and Programs

**Description:**

The South East Texas Regional Planning Commission (SETRPC) will be administering CDBG Hurricane Ike Disaster funds for Hardin, Jefferson and Orange Counties. As such, SETRPC is seeking a qualified underwriter to provide underwriting for multifamily applicants in accordance with Federal and State CDBG regulations and requirements.

**Reimbursement:**

SETRPC will pay between \$800 and \$1,600 depending on deal requirements. Terms are 30 days net.

**Minimum Qualifications:**

1. Minimum ten years verifiable experience with the CDBG program
  - a. Shown on applicant's resume
2. Minimum five years verifiable experience in underwriting and/or development of multifamily projects, including low income housing tax credit developments
  - a. Shown on applicant's resume

**Response Date:**

Please respond by Close of Business, Wednesday, May 6, 2009.

**Respond To:**

Mike Foster  
SETRPC  
2210 Eastex Freeway  
Beaumont, TX 77703  
(409) 899-8444 Ext. 7504  
TRD-200901468  
Mike Foster  
Manager, Community Development Program  
South East Texas Regional Planning Commission  
Filed: April 17, 2009

**Texas Department of Transportation****Public Hearing Notice - Statewide Transportation Improvement Program**

The Texas Department of Transportation (department) will hold a public hearing on Thursday, May 14, 2009 at 10:00 a.m. at the Texas Department of Transportation, 200 East Riverside Drive, Room 1A-2, Austin, Texas to receive public comments on the May Quarterly 2009 Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2008-2011. The STIP reflects the federally funded transportation projects in the FY 2008-2011 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Beaumont, Dallas-Fort Worth, El Paso, and Houston. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.).

Section 134(j) requires an MPO to develop its TIP in cooperation with the state and affected transportation operators, to provide an opportunity

for interested parties to participate in the development of the program, and further requires the TIP to be updated at least once every four years and approved by the MPO and the Governor or Governor's designee. Section 135(g) requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

In accordance with 43 TAC §15.8(d), a copy of the proposed May Quarterly 2009 Revisions to the FY 2008-2011 STIP will be available for review, at the time the notice of hearing is published, at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, and on the department's website at:

[www.txdot.gov](http://www.txdot.gov)

Persons wishing to review the May Quarterly 2009 Revisions to the FY 2008-2011 STIP may do so online or contact the Transportation Planning and Programming Division at (512) 486-5033.

Persons wishing to speak at the hearing may register in advance by notifying Lori Morel, Transportation Planning and Programming Division, at (512) 486-5033 not later than Wednesday, May 13, 2009, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Government and Public Affairs Division, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-9957. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Further information on the FY 2008-2011 STIP may be obtained from Lori Morel, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas 78704, (512) 486-5033. Interested parties who are unable to attend the hearing may submit comments to James L. Randall, P.E., Director, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas 78704. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by Monday, June 15, 2009 at 4:00 p.m.

TRD-200901496  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: April 21, 2009

**Public Notice - Aviation**

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

[http://www.txdot.gov/public\\_involvement/hearings\\_meetings/schedule.htm](http://www.txdot.gov/public_involvement/hearings_meetings/schedule.htm)

Or visit [www.txdot.gov](http://www.txdot.gov), click on Public Involvement, click on Hearings and Meetings, and then click on Aviation.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PI-LOT.

TRD-200901495

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: April 21, 2009



### Request for Proposal - Professional Services

The Texas Department of Transportation (department) announces a Request for Proposal (RFP) for professional services pursuant to Government Code, Chapter 2254, Subchapter A. The term of the contract will be from project initiation to September 30, 2009. The department will administer the contract. The RFP will be released on May 1, 2009.

**Purpose:** The department is seeking a qualified certified public accounting (CPA) firm to provide accounting services for (1) documenting policies and procedures for establishing and maintaining an adequate internal control structure and procedures for financial reporting; (2) documenting policies and procedures for assessing the effectiveness of the internal control structure and financial reporting procedures; and (3) assessing the internal control structure and financial reporting procedures. This work relates to all quarterly and annual financial reports filed with the Texas Transportation Commission (commission), including but not limited to the annual financial reports for the department, the operating budget, investment report, and cash report. Department staff will be providing the commission with the assessment of internal controls.

**Eligible Applicants:** Eligible applicants include, but are not limited to, regionally recognized CPA firms.

**Program Goal:** The completion of a report which includes an ongoing process of formalizing policies relating to internal controls and professional responsibility that will provide greater responsiveness and accountability for department actions.

**Review and Award Criteria:** Each application will first be screened for completeness and timeliness. Proposals that are deemed incomplete or arrive after the deadline will not be reviewed. A team of reviewers from the department will evaluate the proposals as to the accounting firm's competence, knowledge, and qualifications and as to the reasonableness of the proposed fee for the services. The criteria and review process are further described in the RFP.

**Deadlines:** The department must receive proposals prepared according to instructions in the RFP package on or before May 26, 2009 at 3:00 p.m.

**To Obtain a Copy of the RFP:** Requests for a copy of the RFP should be submitted to Duane Sullivan, Finance Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483; email: [dksulliv@dot.state.tx.us](mailto:dksulliv@dot.state.tx.us); telephone number (512) 486-5313; and fax (512) 486-5390. Copies will also be available on the Electronic State Business Daily (ESBD) at (<http://esbd.cpa.state.tx.us/>).

TRD-200901497

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: April 21, 2009



## Texas Water Development Board

### Request for Statements of Qualifications for Water Research

Pursuant to 31 Texas Administrative Code §355.3, the Texas Water Development Board (TWDB) requests the submission of Statements of Qualifications leading to the possible award of two separate contracts to (1) develop a groundwater availability model for the Rustler Aquifer and (2) complete a study to quantify recharge in the Gulf Coast Aquifer System. The total amount for the Rustler Aquifer project shall not exceed \$250,000 and the total amount for the Gulf Coast Aquifer recharge study shall not exceed \$350,000. Once contracts are negotiated, we anticipate that the projects will take no more than two years to complete. Guidelines for Statements of Qualifications, which include an application form and more detailed research topic information, will be supplied by the TWDB upon request.

### Description of Research Objectives

Since 1999, the Texas Legislature has approved funding for the Groundwater Availability Modeling Program. The purpose of the Groundwater Availability Modeling Program is to provide reliable and timely information on groundwater availability to the citizens of Texas to ensure adequate supplies or recognize inadequate supplies over a 50-year planning period. Numerical groundwater flow models of the aquifers in Texas will be used to make this assessment of groundwater availability. However, once a groundwater availability model is completed, it is important to be able to revisit the models to incorporate new information or understanding of the aquifers.

#### *Rustler Aquifer Groundwater Availability Model*

In support of the Groundwater Availability Modeling Program, the TWDB is requesting Statements of Qualifications on developing a numerical groundwater flow model for the Rustler Aquifer. This proposed groundwater availability modeling project shall (1) include stakeholder involvement; (2) use valid, defensible, and documented data and standard scientific modeling procedures; and (3) follow all TWDB groundwater availability modeling protocol and standards, as applicable.

Details on the modeling projects and project requirements are available from the TWDB. The TWDB website site includes (1) guidelines for the Statements of Qualifications, (2) copies of the attachments, (3) a list of Statement of Qualifications Review Criteria, and (4) some supporting material ([http://www.twdb.state.tx.us/assistance/financial/fin\\_research/research.htm](http://www.twdb.state.tx.us/assistance/financial/fin_research/research.htm)).

The following issues need to be addressed in each Statement of Qualifications:

- \*experience with hydrogeology, knowledge of Rustler Aquifer, and experience with Groundwater Vistas and MODFLOW;

- \*communication between the contractor and the stakeholder advisory forum for the model, regional water planning groups, and groundwater conservation districts;

- \*conceptual model of recharge and how recharge will be modeled;

- \*how surface-water/groundwater interaction will be modeled;

- \*how hydraulic properties will be distributed;

- \*hydrostratigraphy for the model;

- \*approach for modeling the down-dip boundary of the model (if appropriate);
- \*approach for calibrating the model;
- \*how the project will benefit statewide water planning and groundwater districts; and
- \*total budget and an itemized budget broken by tasks and personnel.

In addition, we expect potential contractors to indicate their abilities in:

- \*general hydrogeology,
- \*hydrogeology of the modeled aquifer,
- \*numerical groundwater flow modeling,
- \*geographical information systems,
- \*communicating with the public,
- \*technology transfer,
- \*producing high-quality reports, and
- \*meeting deadlines.

The research proposal description shall not be more than 15 pages in length (using Times Roman 12 font), excluding qualifications and experience of project staff. Applicants should be familiar with standards and requirements for the TWDB groundwater availability models.

#### *Recharge Study of the Gulf Coast Aquifer System*

A key component to understanding groundwater flow and availability is understanding recharge to the aquifer system. Understanding the rate by which water percolates from the land surface to the aquifer without being removed by plants, evaporation processes, or is diverted at shallow depths to be discharged through springs and streams is not very well documented. Recharge is usually estimated as part of the calibration process during model development and is constrained by total precipitation as the upper limit. We propose using a combination of all or some of the following approaches to constrain and understand recharge to the Gulf Coast Aquifer System:

- \*chloride mass balance approach,
- \*tritium-helium dating of shallow groundwater,
- \*groundwater level hydrograph analyses,
- \*baseflow estimates including baseflow separation and low-flow studies,
- \*evapotranspiration estimation at the regional scale using remote sensing method and at the local scale using portable evapotranspiration simulators near discharge areas, and
- \*field studies using other appropriate age dating techniques, fluxmeters to monitor temporal variability, chemical hydrograph separation using total dissolved solids at stream gages and groundwater data in a mixing model, and metering for radon concentrations.

In support of the Groundwater Availability Modeling Program, the TWDB is requesting Statements of Qualifications to conduct and document a multi-faceted approach to quantifying recharge in the Gulf Coast Aquifer System from the Brazos River to the Rio Grande.

Details on the project requirements are available from the TWDB. The TWDB website includes (1) guidelines for the Statements of Qualifications, (2) copies of the attachments, (3) a list of Statement of Qualifications Review Criteria, and (4) some supporting material ([http://www.twdb.state.tx.us/assistance/financial/fin\\_research/research.htm](http://www.twdb.state.tx.us/assistance/financial/fin_research/research.htm)).

The following issues need to be addressed in each Statement of Qualifications:

- \*need for research,
  - \*approaches for quantifying recharge,
  - \*progress monitoring procedures,
  - \*approach to organizing and managing the project,
  - \*specific and usable deliverables,
  - \*how the project will benefit statewide water planning and groundwater districts, and
  - \*total budget and an itemized budget broken by tasks and personnel.
- In addition, we expect potential contractors to indicate their abilities in:
- \*general hydrogeology,
  - \*numerical groundwater flow modeling,
  - \*geographical information systems,
  - \*technology transfer,
  - \*producing high-quality reports, and
  - \*meeting deadlines.

The research proposal description shall not be more than 15 pages in length (using Times Roman 12 font), excluding qualifications and experience of project staff. Applicants should be familiar with standards and requirements for the TWDB groundwater availability models.

**Description of Funding Consideration** Up to \$600,000 has been identified for water research assistance from the TWDB's Research and Planning Fund for the research for these projects: a total amount not to exceed \$250,000 from the Research & Planning Fund for Fiscal Year 2009 to develop a groundwater availability model for the Rustler Aquifer and (2) a total amount not to exceed \$350,000 from the Research & Planning Fund (\$100,000 for Fiscal Year 2009 and \$250,000 for Fiscal Year 2010, if available) to conduct a multi-faceted approach to quantifying recharge in the Gulf Coast Aquifer System. Following the receipt and evaluation of all Statements of Qualifications, the TWDB may adjust the amount of funding initially authorized for water research. Oral presentations may be required as part of qualification review. However, invitation for oral presentation is not an indication of probable selection. Up to 100 percent funding may be provided to individual applicants; however, applicants are encouraged to contribute matching funds or services, and funding will not include reimbursement for indirect expenses incurred by political subdivisions of the state or other state and federal agencies. In the event that acceptable Statements of Qualifications are not submitted, the TWDB retains the right to not award funds for the contracts.

#### **Deadline, Review Criteria, and Contact Person for Additional Information**

Five double-sided copies of a complete Statement of Qualifications, including the required attachments, must be filed with the TWDB prior to 12:00 p.m. (Central Standard Time), May 28, 2009. Statements of Qualifications must be directed either in person to Mr. David Carter, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas; or by mail to Mr. David Carter, Texas Water Development Board, P.O. Box 13231-Capitol Station, Austin, Texas 78711-3231. Statements of Qualifications will be evaluated according to 31 Texas Administrative Code §355.5 and the Statements of Qualifications Review Criteria rating form included in the TWDB's Guidelines for Water Research Grants. Research

shall not duplicate work planned or underway by state agencies. All potential applicants must contact the TWDB to obtain these guidelines.

Requests for information, the TWDB's rules covering the Research and Planning Fund, detailed evaluation criteria, more detailed research topic information, and the guidelines may be directed to Mr. David Carter at the preceding address or by calling (512) 936-6079. All technical questions should be directed to Ms. Cindy Ridgeway at (512) 936-2386.

TRD-200901465  
Kenneth L. Petersen  
General Counsel  
Texas Water Development Board  
Filed: April 16, 2009

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### How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 33 (2008) is cited as follows: 33 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "33 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 33 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document format) version

through the Internet. For website subscription information, call the Texas Register at (512) 463-5561.

### Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

#### TITLE 40. SOCIAL SERVICES AND ASSISTANCE

##### *Part I. Texas Department of Human Services*

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).